

1 IN THE COURT OF COMMON PLEAS
2 LANCASTER COUNTY, PENNSYLVANIA
3 CIVIL

4 -----
5 DONNA SODERS, on behalf of
6 herself and all others
7 similarly situated,

8 Plaintiff

9 Vs.

10 No. CI-00-04255

11 General Motors Corporation,

12 Defendant
13 -----

14 Expedited Hearing

15 Before: HONORABLE LOUIS J. FARINA,
16 PRESIDENT JUDGE

17 Date : Thursday, May 21, 2009

18 Place : Courtroom No. 10
19 50 North Duke Street
20 Lancaster, Pennsylvania

21 APPEARANCES:

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For - The Plaintiff

ORDERED: 5/21/09

LODGED: _____

FILED: _____

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5 For - The Defendant

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9 For - The Objectors

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1 P R O C E E D I N G S
2 (1:33 p.m.)

3 THE COURT: Good afternoon. We're convened
4 on plaintiff's motion for an expedited hearing
5 concerning post-fairness hearing matters. Let's have
6 counsel enter their appearances here.

7 MR. RODA: Joseph Roda, Your Honor.

8 MS. BURKHOLDER: Michele Burkholder.

9 MR. UNDERHILL: Christopher Underhill for
10 GM.

11 MR. GIBSON: Robert Gibson for the
12 objectors.

13 MR. RODA: I should also mention and
14 Mr. Underhill can confirm that Mr. Lipps is available by
15 telephone, but GM had concerns about undertaking the
16 expense and the cost to send him out here for this, in
17 light of the communication last week that Mr. Gibson was
18 not going to be here and the question about what would
19 transpire at the hearing. He is prepared, if Your Honor
20 wished at a certain point to hear from him.

21 THE COURT: Very well. All right. You may
22 proceed, Mr. Roda.

23 MR. RODA: Your Honor, we asked for this
24 expedited hearing on May 1 as a result of a
25 communication which is outlined in the papers but which

1 I will confirm on the record, which was the intended
2 purpose for us today.

3 The final approval hearing before Your Honor
4 finished a few minutes short of 10:00 on April 28th.

5 That afternoon, in my office, I discovered
6 that I had a voicemail, played it. It was from
7 Mr. Gibson.

8 THE COURT: Are you going to give evidence
9 at this point?

10 MR. RODA: As Your Honor thinks appropriate.
11 As an officer of the Court, we consider ourselves
12 under --

13 THE COURT: No, I think if we're going to
14 get into the allegations made in your petition, which I
15 consider raising serious questions, I think you ought to
16 be under oath and subject to cross examination.

17 MR. RODA: That's fine.

18 JOSEPH F. RODA,
19 called as a witness, having been duly sworn or affirmed,
20 was examined and testified as follows:

21 DIRECT TESTIMONY

22 MR. RODA: Your Honor, should I proceed from
23 here?

24 THE COURT: That's all right with me.

25 MR. RODA: That's fine. As I was saying,

1 shortly after noon, I discovered a voicemail, listened
2 to it. It was from Mr. Gibson. He was asking me to
3 call him. I asked Ms. Burkholder to come down to listen
4 to the call.

5 For the record, I had never spoken with
6 Mr. Gibson nor met him before that morning here at the
7 final approval hearing.

8 MR. GIBSON: Your Honor, I apologize for
9 interrupting.

10 THE COURT: Are you objecting to something?

11 MR. GIBSON: It's not an objection. Miss
12 Burkholder, I also would like to cross-examine her since
13 she was a party to the telephone conversation. I would
14 ask that she be sequestered from the room while Mr. Roda
15 testifies so that then I can cross-examine her without
16 her hearing Mr. Roda's testimony.

17 MR. RODA: If that is the case, that's fine,
18 but I believe that Mr. Kairis, Mr. Gibson's client, is
19 in the room. Since I will want to put him on the stand,
20 I ask that he be sequestered.

21 MR. GIBSON: That's not him.

22 THE COURT: Let's ask this. Is that a
23 witness?

24 MR. GIBSON: No, Your Honor.

25 MR. SINK: I'm just an observer.

1 MR. RODA: We should note for the record,
2 Your Honor, which the record would not reflect, that
3 even though your order did direct that Mr. and
4 Mrs. Kairis be here, they are not.

5 THE COURT: Were they parties to the
6 conversation?

7 MR. RODA: No, they were not, but they were
8 represented because the representation that I will get
9 into was purportedly made for them.

10 MR. GIBSON: I'm prepared to address that,
11 Your Honor.

12 THE COURT: Well, we'll get to that. If the
13 necessary party isn't here that should be here, there
14 are inferences that can be drawn by their absence
15 without reasonable explanation or excuse.

16 MR. GIBSON: I will reserve my right for
17 that.

18 THE COURT: You may, I understand.

19 MR. UNDERHILL: Let me add something, if I
20 may, Your Honor. I'm here for General Motors, but I
21 believe Mr. Roda is going to ask me to testify, as well,
22 to a subsequent telephone conversation, a conference
23 call.

24 So if you're going to exclude
25 Ms. Burkholder, you might as well throw me out, too, if

1 that's what Mr. Gibson wants.

2 THE COURT: It's not uncommon to sequester
3 witnesses. But I think under the circumstances and
4 given the seriousness of the allegations, I should do
5 that.

6 MR. UNDERHILL: I'd like to state for the
7 record that it will leave General Motors unrepresented
8 at this point, but I will waive any argument that might
9 be made that I should be here as counsel, even though I
10 may be called as a witness.

11 THE COURT: We can deal with that later, if
12 the need arises.

13 Mr. Roda, I have no objection if you sit
14 down.

15 MR. RODA: Very well, Your Honor. Thank
16 you. Picking up where I left off.

17 I asked Miss Burkholder to come down before
18 I placed the call. I placed the call and reached
19 Mr. Gibson. I believe, in fact, he answered the phone.

20 I said who I was. I said that
21 Ms. Burkholder was in the room with me. I said that he
22 was -- that we were operating by speakerphone so that
23 Miss Burkholder could hear.

24 The conversation went essentially like this:
25 After that introduction, Mr. Gibson said that he was

1 going to file an appeal unless we could get it worked
2 out or resolved, words to that effect. I believe the
3 word was resolved.

4 I said what did he mean. He said something
5 to the effect of, you know what I'm talking about. And
6 I said no, I don't, what do you mean?

7 He paused, best I recall, and then he said
8 that he was demanding \$100,000 not to file an appeal.
9 The \$100,000, he said, I can't recall whether it was in
10 response to a question from me or not, was to be divided
11 between him and his clients pursuant to an agreement
12 between them, the terms of which he declined to
13 disclose.

14 The -- he said further that -- I asked him
15 how in the world could he justify that when his clients,
16 even if this case had gone forward, would have stood to
17 recover several hundred dollars, max.

18 He said that they had conferred a benefit on
19 the class by getting the fees reduced. I said that was
20 not true, we had reduced the fees voluntarily,
21 independent of his objection.

22 I further said that even if what he said
23 were true, that none of the fees that were voluntarily
24 reduced went to the benefit of the class. They weren't
25 distributed to the class, so that no benefit had been

1 conferred on them; to which he then said something to
2 the effect of that his clients had conferred a benefit
3 on class actions generally, on consumers generally.

4 The conversation pretty much -- then he said
5 that he thought that since we had already voluntarily
6 reduced our fee, that GM should pay the \$100,000.

7 The conversation ended, I believe, at that
8 point, at which I promptly called both Mr. Underhill and
9 Mr. Lipps to report the conversation. It was our
10 unanimous agreement that the demand was outrageous.

11 I arranged to have a conference call the
12 next day with Mr. Gibson so that he could hear from
13 them -- they could hear from him directly this demand
14 and confirm what I had represented.

15 We had that call.

16 THE COURT: You said it was the next day?

17 MR. RODA: The next day, Messrs. Lipps,
18 Underhill, Miss Burkholder, Mr. Gibson and I were the
19 parties to that call.

20 I opened the call by telling Mr. Gibson that
21 the others -- who was on the line, that I had reported
22 the conversation of the day before, specifically that he
23 had demanded \$100,000 in order not to file the appeal,
24 that he had said he believed that GM should pay it, and
25 that he believed, which was the reason for the call,

1 that he should convey that directly to GM and explain
2 his reasoning.

3 Mr. Gibson said to the effect that he didn't
4 care who paid the demand, that everybody were able
5 lawyers, something to that effect, and they could decide
6 who would pay it; but everybody knew what his demand
7 was, and the decisions could be made accordingly.

8 He said that he was going to file his appeal
9 by the end of the week. This was a Wednesday, I
10 believe, because our hearing, I think, was on Tuesday.

11 He was going to file the appeal by the end
12 of the week, absent a deal. The conversation -- I
13 believe Mr. Lipps said something to him that in GM's
14 view, GM had a binding settlement agreement, the
15 implication being that there was not going to be
16 anything further paid.

17 I believe he was interrupted at that point
18 by Mr. Gibson, who said something to the effect that he
19 didn't care, everybody knew what his demand was, he
20 didn't care who paid it, but he was going to file an
21 appeal if it wasn't paid.

22 I also believe that in the beginning of
23 that, I reaffirmed at the beginning of that call what he
24 had said, that he was going to split that \$100,000 with
25 his clients pursuant to an agreement that they had, the

1 terms of which he had declined to disclose.

2 I should add that the day before when he
3 said that he was going to split it, I asked him how much
4 to each. He said that, in effect, that was between him
5 and his clients and not for me.

6 The call that second day with GM's counsel
7 pretty much ended at that point, to the best of my
8 recollection.

9 We then filed our motion for the expedited
10 hearing two days later on May 1. And that is the
11 essence of the calls that we had with Mr. Gibson.

12 THE COURT: For completeness, you should add
13 that you called the Court and had a conference call with
14 Mr. Lipps, yourself, and me, at which you made this
15 report and said you wanted to file a motion. I said you
16 have to show me the authority to do so in the motion.

17 MR. RODA: That is correct. That was on, I
18 believe, April 30th, because we then filed the motion
19 the next day. We've made that call, I should add, to
20 Your Honor, after discussing it with counsel for GM
21 because all of us believed this was a very -- that the
22 demand had raised a very serious matter at several
23 levels.

24 One was having to do with class action and
25 the rules that the Court is to approve these or payments

1 to class members. We thought it raised issues under the
2 Disciplinary Code, all three counsel.

3 I should say that it was also discussed
4 among us whether it raised issues under both the
5 criminal and the federal and state laws of extortion.
6 And we believe that it was in that vein that we placed
7 the call to the Court, reporting what we believed as
8 officers of the Court needed to be reported to the Court
9 and seeking the Court's guidance as to what was
10 appropriate at that point.

11 Your Honor did tell us that you needed to
12 see a motion, you needed to consider it. We filed a
13 motion. The order emanated.

14 THE COURT: Mr. Gibson?

15 CROSS EXAMINATION

16 BY MR. GIBSON:

17 Q. Mr. Roda, you just mentioned that you had
18 concerns that my actions raised serious issues regarding
19 violations of the Pennsylvania Disciplinary Code. Are
20 you aware that it's a violation of the Disciplinary Code
21 to engage in ex parte communications with the Court?

22 A. We did not believe this was an ex parte
23 communication with the Court.

24 Q. What --

25 A. Please let me finish. All counsel who were of

1 record in this case were on that call, and we believed
2 that because it involved a potential criminal matter,
3 that we were right in reporting it to the Court first
4 and seeking the Court's guidance without involving the
5 subject of the potential criminal matter.

6 Q. Could you have done that by a letter and copied
7 me, Mr. Roda?

8 A. Could we have done that?

9 Q. That was my question.

10 A. Perhaps, sure.

11 Q. Mr. Roda, are you aware, and I'm going to show
12 you a document that I would like to have marked as K-1
13 for identification.

14 MR. GIBSON: Your Honor, it's my entry of
15 appearance in the case.

16 THE COURT: Where do you get K? Where does
17 the K come from?

18 MR. GIBSON: Kairis.

19 BY MR. GIBSON:

20 Q. I'm going to hand you a copy of my entry of
21 appearance in the case.

22 Can you tell the Court, does that have a time
23 stamp on it?

24 A. Sure, it's April 9. It's -- I'm sorry, April 6
25 of this year.

1 Q. And I want you to also look, there's a
2 certificate of service attached to that entry of
3 appearance. Is your name on that certificate of
4 appearance, Mr. Roda?

5 A. Yes it is.

6 Q. Did you receive a copy of an entry of appearance
7 in April of this year?

8 A. I don't recall seeing it. That doesn't mean that
9 I didn't, my office didn't receive it. I don't see
10 every piece of paper that comes in on that case. I see
11 those things I need to be aware of.

12 Q. You remember me being at the final fairness
13 hearing, don't you, Mr. Roda?

14 A. I just mentioned that in my own narrative.

15 MR. GIBSON: I would like to have that
16 placed into -- the entry of appearance placed into
17 evidence. Should I save my exhibits until the end, Your
18 Honor?

19 THE COURT: Yes.

20 BY MR. GIBSON:

21 Q. How long was your telephone conversation -- when
22 was your telephone conversation with the Court,
23 Mr. Roda?

24 A. I said I believe it was April 30th,
25 reconstructing the days. The hearing was on the 28th,

1 the conference call that you were involved with with
2 counsel for GM and our office was the next day, the
3 29th.

4 I believe that the discussion with the Court was
5 on the 30th because we filed our motion for expedited
6 hearing on the 1st.

7 Q. And whose -- who was present on that call,
8 Mr. Roda?

9 A. GM's two counsel, Messrs. Lipps and Underhill;
10 Miss Burkholder and I; Judge Farina.

11 Q. Was anyone else from Judge Farina's chambers on
12 the call?

13 A. I have no knowledge of that.

14 Q. Well, you were on the call. I'm asking you, was
15 anyone else?

16 A. I don't know that because no one other than Judge
17 Farina spoke.

18 Q. Who initiated the call to Judge Farina?

19 A. I believe we lined it up by a conference call,
20 call-in number for the participants.

21 Q. Who initiated the call?

22 A. Let me finish. I believe my office undertook to
23 initiate the call-in numbers and circulate them among
24 the participants.

25 Q. So you arranged that through what, through a

1 service like AT&T or something like that?

2 A. Something like that. Our office does routinely
3 conference calls, and I just did it the same way.

4 Q. Sure you did. Your office initiated this call to
5 the Court?

6 A. In the manner I just described, yes.

7 Q. How long did the telephone call with the Court
8 last?

9 A. Not long. I believe it was -- it was between, to
10 the best of my memory, five and less than ten minutes.

11 Q. Between five and ten minutes is your
12 recollection?

13 A. Best recollection, yes.

14 Q. What did you say to the Court during -- what did
15 you state during that conversation?

16 A. I reported what I stood up and reported here. I
17 reported that we were -- and I believe I was the first
18 one to talk after everyone was on the line.

19 I said that we had asked for this because it was
20 a serious matter. I believe that was my phrasing, that
21 it had arisen immediately after the final approval
22 hearing.

23 I then related to Judge Farina the sequence of
24 events that I related here in court a moment ago. First
25 your call, your voicemail, my return, what you said,

1 specifically the demand for \$100,000, the statement that
2 it was going to be divided between you and your clients,
3 the conversation that we had the next day when Messrs.
4 Lipps and Underhill were on the line. I think that was
5 it. That was the preface.

6 Q. Did Miss Burkholder speak during that discussion?

7 A. No, she did not. She did not.

8 Q. Did Mr. Lipps speak during the conversation?

9 A. I believe he did, but I believe it was very, very
10 brief. I don't believe that he and Mr. Underhill said
11 too much. I think they each spoke, but I can't recall
12 the specifics of what each said.

13 Q. What did Judge Farina say during this -- during
14 this telephone conversation, was the issue ever raised
15 as to whether or not I should be included on any
16 conference call with the Court?

17 A. You have asked --

18 Q. During this conference call.

19 A. You have asked two questions. You said first,
20 what did Judge Farina say. And then you said, was the
21 issue ever raised about whether you should be on. Which
22 one should I answer?

23 Q. Take them as two and start with the first.

24 A. Judge Farina did speak during the call, after
25 listening to what I said, and I believe the concurrence,

1 however brief it was, that Messrs. Lipps and Underhill
2 may have offered.

3 Judge Farina then said in essence what were we
4 asking for. I said we were asking for -- or we --
5 because it was with the concurrence of GM's counsel, we
6 were asking for an expedited hearing to put your demand
7 and the sequence of events on the record.

8 Judge Farina responded in essence that he would
9 need a motion to consider before taking that action.
10 And that was essentially the give and take on the call
11 because we concluded with saying we would be filing such
12 a motion.

13 I do not recall there being a question raised as
14 to whether you should be on the line. I believe that I
15 may have said that we had placed -- I'm sure I said we
16 are placing this call because of the seriousness that
17 we, the counsel on both sides, believe that your demand
18 raised.

19 I do not believe we expressly addressed not
20 including you in the call. I think that was implicit
21 for reasons that I mentioned here earlier.

22 Q. Mr. Roda, did you request of the Court in your
23 request for -- during your conference call with the
24 Court, did you request that the expedited hearing be
25 held in May so that it occurred prior to GM's June 1st

1 bankruptcy deadline filing?

2 A. The bankruptcy deadline filing did not come up in
3 the conversation. We did not make that link. We just
4 asked for an expedited hearing to put what we thought
5 was a very serious matter of record as soon as possible.

6 Q. Very serious.

7 Again, just so I'm sure, that call was between
8 five and ten minutes?

9 A. My best recollection. Could it have been a few
10 minutes beyond ten minutes? Maybe. But it was a very
11 brief call.

12 Q. So it could have been beyond ten minutes?

13 A. If it was, it would not have been by much.

14 Q. You gave lengthy direct testimony about your two
15 telephone conversations with me. Isn't it true, and I
16 can certainly imagine getting the phone records -- isn't
17 it true that each of our telephone conversations only
18 lasted a couple of minutes?

19 A. I don't recall -- your voicemail was very brief.
20 Our conversation on the 28th lasted four minutes and 54
21 seconds. I know that because we have the telephone
22 record here.

23 Q. Time on that one, okay.

24 A. The conversation the next day with Messrs. Lipps
25 and Underhill I believe was of equal short duration.

1 Q. Isn't it true that during -- first focus on my
2 first telephone conversation with you, which included
3 you and Michele Burkholder.

4 Isn't it true that during that conversation, that
5 I explained to you the objectors' position, that the
6 objection had conferred a benefit upon the class
7 specifically and the public in general; that it defeated
8 the public perception that class action lawyers
9 unreasonably profit from unreasonable settlements, or as
10 close along the lines to that effect?

11 A. What I -- to repeat what I said, I first asked
12 you how your clients could justify that kind of money
13 when they could have stood to receive only several
14 hundred dollars each.

15 You then replied to that, they had conferred a
16 benefit on the class. The implication being that they
17 were entitled to much more than they would have stood to
18 recover as class members. I then said, but they didn't
19 convey --

20 Q. Just what I said.

21 A. I'm just telling you the sequence of it because
22 in order to understand what you said --

23 THE COURT: Let him go, Mr. Gibson. Let him
24 continue.

25 THE WITNESS: I replied to that, your

1 clients had not conferred a benefit because the fees
2 that we had waived, voluntarily, and I said it was not
3 because of your objection, which we had known about
4 before we filed the written fee petition earlier; that
5 that reduced portion did not go to the class. They
6 didn't receive a dollar of it.

7 Thus, even if there were a causal
8 relationship between your objection and the reduction of
9 the fee, that did not inure to the benefit of the class.

10 That was when you came up with the second
11 explanation that they had conferred a benefit on the
12 public generally or consumers generally or class action
13 practice in general, generally.

14 I do not recall your making the statement
15 that was at the end of your question about the public
16 looking askance, as it was, at class action practice or
17 class action lawyers.

18 BY MR. GIBSON:

19 Q. Let me just cut to the chase. Isn't it true that
20 whether you disagree with this or not, isn't it true
21 that I took the position on the phone call that the
22 objection conferred a benefit on the class, counsel's
23 fees being reduced by one million dollars; isn't that
24 true?

25 A. I think that's true. I think in response to my

1 questions, that was what you said. I would hasten to
2 say that was not mentioned until I asked how you could
3 justify that. That was not mentioned before you asked
4 for the \$100,000. You linked the \$100,000 to nothing
5 other than your not filing an appeal.

6 Q. My question was, was that mentioned during the
7 telephone call?

8 A. In response to my questions as to how you could
9 purport to justify that.

10 THE COURT: And what was that justification,
11 as you recall it?

12 THE WITNESS: His first justification was
13 that it conferred a benefit on the class. When I said
14 they had not because the class wasn't receiving the
15 reduced portion of the fee, he said, well, they have
16 conveyed on the consuming public generally.

17 BY MR. GIBSON:

18 Q. Mr. Roda, isn't it also true that you took the
19 position during our telephone conversation that the
20 objection -- after hearing my position, that the
21 objection resulted in your fee being reduced by a
22 million? Didn't you take the position that that wasn't
23 true?

24 A. I said your objection did not cause the
25 reduction, yes. The fee had been reduced by a million.

1 I said it had not been because of your objection.

2 Q. And in fact, five days before the final fairness
3 hearing, you had filed a fee petition requesting that
4 your fee be reduced five days beforehand from 1.8
5 million to 1.6 million; is that true?

6 A. That's absolutely true, as I said moments ago.
7 At which point we had had your objection for months
8 before we filed that petition.

9 Q. I realize that. And you never served me with a
10 copy. Just like you didn't include me in the phone
11 call, you never served me with a copy of your fee
12 petition, did you, Mr. Roda?

13 A. We did not -- after researching the rules, we
14 found no obligation in the rules of procedure or in case
15 law to serve you with a copy of our fee petition.

16 It was a matter of public record. You knew from
17 the Court notice, which had prompted you to file the
18 objection, what the timetable was for the submission of
19 the petition for final approval, just as we did when you
20 asked for it in court.

21 Had you asked us for a copy with the same phone
22 call that you placed asking me to call you about the
23 demand, we would have gladly emailed you a copy of the
24 petition instantly.

25 Q. This is a simple yes or no question. Did you

1 serve me with a copy of your fee petition prior to the
2 final fairness hearing?

3 A. I said no.

4 Q. That's sort of a long answer, it got lost in
5 there.

6 At the final fairness hearing, I did request a
7 copy of your fee petition, didn't I?

8 A. You did. You leaned over the railing, asked, and
9 I gave you one right away.

10 Q. After you gave me a copy of the fee petition,
11 that was when you for the first time voluntarily told
12 the Court about your voluntary reduction of your fee by
13 another 800,000; isn't that true, Mr. Roda?

14 A. The sequence that you mention in terms of strict
15 time is true, but only because we had not -- yes,
16 because I hadn't had a chance to speak to the Court
17 before giving you that fee petition.

18 I can assure you that handing that fee petition
19 to you over the rail had nothing to do with what I said
20 to the Court after, that I came into court preparing to
21 make that reduction.

22 Q. Well, isn't it true you had another four days
23 after you filed your fee petition before the hearing to
24 file something further reducing it, Mr. Roda?

25 A. Could we have filed something further?

1 Q. Yeah.

2 A. I guess that's possible. I believe we filed our
3 fee petition on Thursday, so there would have been the
4 Friday and Monday in between there. Yes. Could we have
5 filed? Yes, we could have.

6 Q. You tried to ask me -- during our conversation, I
7 had indicated to you that we were willing to settle the
8 case for \$100,000; is that correct?

9 A. Oh, you made that very clear. You said, My
10 demand is \$100,000.

11 Q. And you then tried to inquire as to how that
12 would be divided. I never suggested anything along
13 those lines, did I?

14 A. I said, how would that be -- you either
15 volunteered that it would be divided before I asked
16 that. I know I asked what the split would be, and you
17 declined to give that. You said, in effect, That's not
18 your business, that's between my clients and me.

19 I believe you volunteered that it would be split
20 between you and your clients.

21 Q. I don't have that recollection, because that's
22 not true. But I certainly did not divulge to you the
23 terms of my retainer agreement with my client, did I?

24 A. No, I just said you declined to do that.

25 Q. Okay. And during our telephone conversation,

1 while a number was suggested and while the various
2 arguments were going back and forth about the benefits
3 conferred on the class, you never suggested that a
4 settlement in a class action case needs Court approval,
5 did you?

6 A. That a settlement in a class action needs Court
7 approval?

8 Q. Um-hum. That --

9 A. I don't believe that topic came up in our brief
10 conversation.

11 Q. We never got that far, did we?

12 A. I don't recall that coming up.

13 Q. I don't either. You have, however, subsequent to
14 that call, raised the issue that you believe that it is
15 unethical to enter into a private settlement in a class
16 action case without Court approval, haven't you?

17 A. No. I have said it is against the rules to
18 request -- what I have said is that under the law, if
19 the Court approves fees in class actions, and I have
20 said that -- I don't know if I have raised it insofar as
21 with what you filed before Judge Farina.

22 I know we intend to raise it with the Superior
23 Court, that it is against the Code of Professional
24 Conduct for an attorney to share fees with a
25 non-attorney.

1 Q. Did I ever tell you I was sharing fees with a
2 non-attorney, Mr. Roda?

3 A. (No audible response.)

4 Q. Simple question.

5 A. Give me a moment. I don't know that you,
6 yourself, characterized the \$100,000 as a fee. But the
7 \$100,000 by definition could be either a fee or a
8 non-fee if it's a --

9 Q. You're not responding to my question.

10 A. I don't believe you raised the issue of whether
11 you characterize it as a fee, the \$100,000 that you were
12 demanding.

13 Q. I never characterized it as a fee, did I?

14 A. I don't think you expressly characterized that.

15 Q. Is there any other way to characterize it?

16 A. Well, by necessary implication, what could it be
17 to you as an attorney other than a fee?

18 Q. You know, you're going to have a chance to
19 cross-examine me at length, and I can explain it to you,
20 Mr. Roda, but right now it's my turn to ask the
21 questions.

22 Mr. Roda, isn't it true that your firm is
23 involved in -- your firm is RodaNast; is it not?

24 A. It is.

25 Q. And you're a named partner, obviously, and your

1 wife, Dianne, is also a partner; is that true?

2 A. Yes.

3 Q. Are you familiar with the class action case of
4 Nichols versus SmithKline Beecham, the Paxil anti-trust
5 case?

6 A. I'm aware of the Paxil case.

7 Q. Wasn't your firm lead counsel in that case,
8 Mr. Roda?

9 A. Our firm was in that case. I don't recall if we
10 were lead counsel. I was not involved in that case.

11 Q. It's on your website. You don't know if your
12 firm was lead counsel?

13 A. As I sit here today, I could not with a hundred
14 percent confidence say we were lead counsel. I would
15 not be surprised if we turned out to be lead counsel.

16 Q. Are you aware that in that case there were --
17 your wife, I can tell you since you don't have a good
18 recollection, was counsel in that case. But there were
19 several objections filed in that case.

20 A. I don't recall that.

21 Q. Are you aware that those objections were
22 overruled by the trial court?

23 A. Honestly, as I sit here today, I can't say that I
24 have a personal recollection of that.

25 Q. If I told you that was the case, would you have

1 any reason to dispute me?

2 A. If you told me, I might well have a reason to
3 dispute it.

4 MR. GIBSON: Objection, Your Honor.

5 THE COURT: You asked the question. You
6 just didn't like the answer. Just ask another one.

7 MR. GIBSON: Make I make a statement?

8 THE COURT: Ask another question. Look, I
9 understand this is not a friendly hearing.

10 BY MR. GIBSON:

11 Q. So I have in front of me a copy of the docket
12 indicating that appeals were taken of those objections,
13 okay? Are you aware that those objections were
14 subsequently privately settled, Mr. Roda?

15 A. I am not aware of that.

16 Q. Well, if I told you that they were privately
17 settled, would you have any evidence to dispute that?

18 MR. RODA: Your Honor, I'm not sure about
19 this hypothetical question, if he told me, as I sit here
20 today.

21 THE COURT: As he sits here, he's telling
22 you he doesn't know.

23 Just a minute, I'm speaking. If he doesn't
24 know, he doesn't know. If you have something that you
25 can present to the Court that's relevant on this, you

1 will be able to do it.

2 MR. GIBSON: I have a document as K-2, and I
3 will submit that into evidence as well.

4 BY MR. GIBSON:

5 Q. If I told you that I had telephone conversation
6 with local counsel for the objector and that he told me
7 that there was a private settlement, would you have any
8 evidence to dispute that?

9 A. As I say, I was not involved in the Paxil case.
10 I have no personal knowledge of that.

11 Q. And are you aware that there was no Court
12 approval of that private settlement, Mr. Roda?

13 A. I am not aware.

14 Q. Well, do you consider your wife to be unethical,
15 Mr. Roda?

16 A. My wife is very ethical.

17 Q. That certainly leads to the question, now,
18 doesn't it?

19 A. No, it doesn't, sir.

20 Q. Mr. Roda, you can't cite to me a single case that
21 states that a settlement of a private objection requires
22 Court approval in Pennsylvania, can you?

23 A. As I sit here, I can't cite a case.

24 Q. Well, you have had ample time to brief it; isn't
25 that true?

1 THE COURT: I didn't hear that question.

2 BY MR. GIBSON:

3 Q. I said you've had ample time to brief that issue.
4 Haven't you opportunity to brief that issue, Mr. Roda?

5 A. Have we had time, opportunity? I suppose, yes.

6 Q. Mr. Roda, are you involved in other class actions
7 besides this Soders class action?

8 A. Oh, yes. Do you mean me personally or our firm?

9 Q. You meaning you.

10 A. I have been and am.

11 Q. Is your firm, which you are a named partner, also
12 extensively involved in class action litigation?

13 A. We are involved in many class actions.

14 Q. Mr. Roda, isn't it true that you're aware of
15 other instances where objections in class action cases
16 have been settled, private objections have been settled,
17 without Court approval?

18 A. I am not personally aware of any.

19 Q. And I know we were discussing the Paxil case.
20 Are you not aware of the ongoings of any of the cases
21 that your wife is involved in?

22 A. I'm aware of ongoings. I am aware of many of
23 them.

24 Q. You mentioned that you are involved in other
25 class actions. Another class action case that you were

1 involved with was the Highland Tank case, which I think
2 was actually in front of Judge Farina; wasn't it?

3 A. Both parts of your question are correct.

4 Q. And in this case, there was an issue raised as to
5 whether -- in addition to the Highland Tank case, you
6 were also involved in a similar bad faith class action
7 against Erie Insurance Company in Philadelphia; isn't
8 that true?

9 THE COURT: Highland Tank was not bad faith,
10 as I recall, not strictly speaking.

11 MR. GIBSON: Well, it involved insurance,
12 but you certainly would know.

13 THE COURT: That is true.

14 MR. GIBSON: Much better than I.

15 BY MR. GIBSON:

16 Q. At the time Highland Tank was also going on, you
17 were also involved in the case of Foltz versus Erie
18 Insurance Company?

19 A. Correct.

20 Q. There's an issue that came up, and it was
21 addressed in the class certification motion in this case
22 that your client, Donna Soders, was an employee of
23 Hagelgans & Veronis; is that correct?

24 A. Correct.

25 Q. Did you ever disclose to this Court during the

1 class certification process that when -- actually, I
2 will withdraw that.

3 One of the areas inquired about during class
4 certification was the fact that Miss Soders was employed
5 at a local law firm; wasn't it?

6 A. There was inquiry. It was asked at her
7 deposition, if that's what you mean.

8 Q. Was it not -- and I can hand you a copy --
9 addressed in the analysis of whether or not Miss Soders
10 was an adequate representative in the order granting
11 class certification in this case?

12 A. It's mentioned in the bottom paragraph. It is
13 mentioned in the bottom paragraph of the Court's opinion
14 on page 7.

15 Specifically, the Court says while Mrs. Soders is
16 employed as a secretary in the local law firm, she does
17 not work for any of the firms or attorneys involved in
18 this case.

19 The firm for which she works is not involved as
20 counsel in this case; thus, we find her occupation
21 irrelevant to the inquiries here.

22 Q. Did you ever disclose to the Court or counsel for
23 GM that James Hagelgans was your co-counsel in the Foltz
24 versus Erie class action, which was pending at the same
25 time as the Soders class action?

1 A. I don't recall disclosing it, nor would I have
2 seen any reason to do so.

3 Q. Okay. And you would agree with me that's the
4 same Hagelgans of Hagelgans & Veronis that Mrs. Soders
5 worked at?

6 A. It is. I think they were listed as counsel on
7 the complaint.

8 Q. And that was pending at the same time as this
9 case?

10 A. I don't recall the sequence. Erie was the auto
11 parts, the aftermarket auto parts case.

12 This case pended so long, I guess it is true, a
13 lot of cases were pending at the same time as this case,
14 so could they have overlapped.

15 Q. Isn't it true that Mr. Hagelgans shared in part
16 of the fee of the Foltz versus Erie Insurance Company
17 class action case?

18 A. I think he probably did. I don't have a specific
19 recollection, but I think he probably did. He was
20 referring counsel.

21 Q. And you never disclosed that to this Court or to
22 counsel for GM; isn't that true?

23 A. I don't think I ever mentioned it. I don't think
24 there was any occasion to mention it or any requirement
25 to mention it.

1 THE COURT: I am going to ask you the
2 relevance of that. I wasn't counting on being here all
3 afternoon, but I guess I'm going to be, so since there's
4 nobody here to make relevance objections --

5 MR. GIBSON: I could connect the dots.

6 THE COURT: Please.

7 MR. GIBSON: Here's -- Mr. Roda has raised
8 issues of improper conduct on behalf of attorneys, which
9 I'm happy to stand here and address any allegation that
10 he makes, although normally someone who is going to make
11 those kinds of allegations would make sure that they
12 haven't done anything themselves.

13 If it was an issue in this case as to
14 whether or not Miss Soders had a conflict of interest as
15 far as being a class representative, that was an issue.
16 The fact that she was associated with Hagelgans &
17 Veronis was an issue as to whether or not she was an
18 adequate rep, okay?

19 Now, if he knew the whole time that
20 Hagelgans & Veronis was his co-counsel in another case
21 and that they had a financial stake in another case
22 working with Mr. Roda, that's evidence that would have
23 been relevant to the Court and should have been
24 disclosed to the Court. Under the Professional Rules of
25 Conduct, when an attorney knows facts that --

1 THE COURT: No, that's the dot you have to
2 connect for me. Why would that be relevant for the
3 Court to know?

4 MR. GIBSON: Well, if her firm is going to
5 benefit from its relationship with RodaNast, then
6 perhaps her adequacy as a class representative --

7 THE COURT: Wait a minute, wait a minute.
8 Are you suggesting her firm was going to benefit in this
9 case?

10 MR. GIBSON: Indirectly through the other
11 case. In other words, if her firm has a financial stake
12 in being affiliated with RodaNast and she's a class rep,
13 then she's potentially compromised in her judgment as
14 far as going against what class counsel --

15 THE COURT: I guess if anybody needed to
16 know that, if anybody did, it would be GM.

17 MR. GIBSON: Yes, and that's the Rules of
18 Professional Conduct requiring one to disclose that, and
19 that's my point.

20 THE COURT: I said if. The dot is pretty
21 obscure to me in this case. If your suggestion is
22 because he had a relationship with the law firm in
23 another case, then --

24 MR. GIBSON: Which the class rep worked for,
25 which was an issue in this case. Her adequacy was an

1 issue in this case.

2 THE COURT: If she was -- if Hagelgans &
3 Veronis was associated as counsel, yes. But there's no
4 suggestion of that.

5 MR. GIBSON: Well, does James Hagelgans
6 routinely get involved in class action work?

7 THE WITNESS: I don't know. I don't believe
8 so.

9 THE COURT: Probably not, through the
10 limited knowledge that I have.

11 MR. GIBSON: Well, then I certainly imagine
12 that GM's counsel would want to inquire as to
13 Mr. Hagelgans, who is not a class action lawyer, was
14 permitted to share in fees in another class action case
15 where his employee was a class rep in another case. I
16 would think that would be highly relevant to GM.

17 THE WITNESS: Your Honor, if I may, since I
18 am unrepresented, as Your Honor well knows?

19 MR. GIBSON: You had a chance.

20 THE COURT: Let him go. You are going to be
21 in the same boat soon.

22 MR. GIBSON: I'm fine.

23 THE WITNESS: GM had, if anything, ample
24 opportunity to inquire of any aspect of this case. And
25 they did throughout the nine years that it was

1 litigated.

2 THE COURT: I'm well aware of that.

3 MR. GIBSON: That doesn't relieve counsel of
4 their obligations.

5 THE COURT: Let's move on.

6 MR. GIBSON: I have made my point.

7 BY MR. GIBSON:

8 Q. Mr. Roda, are you aware that there has -- I know
9 that we had a disagreement as to whether or not the
10 objection conferred a benefit on the class. I think
11 that that's fair to say, right, that we disagreed on
12 that?

13 A. Yes, and we do.

14 Q. Are you aware after the final fairness hearing
15 that there has been local media coverage of this
16 settlement?

17 A. Sure, and I object, Your Honor, to the relevance
18 of that.

19 THE COURT: Make your point, and I will
20 determine what it is. I remember there was an article.

21 BY MR. GIBSON:

22 Q. Well, isn't it true that there's an article
23 called Unsettling Settlement, class action lawsuit
24 brings a coupon good only for a new GM car to customers
25 who were overcharged 200 to \$250. Law firm gets

1 \$844,000. Do you recall seeing that article?

2 A. I do recall seeing that article.

3 MR. GIBSON: I sent it to you.

4 Mr. Roda is sitting here accusing me of
5 having a baseless and frivolous appeal, and when I say
6 that the benefit I conferred was improving the public's
7 perception by reducing attorney fees in this case by a
8 million dollars for class counsel, who gets grossly
9 overpaid for an atrocious settlement, this cuts right to
10 the core.

11 THE COURT: I already told you what my
12 feeling was on your premise. One, he wasn't grossly
13 overpaid. I applauded his reduction under the
14 circumstances. Two, it wasn't an atrocious settlement.

15 MR. GIBSON: Your Honor, I mean no
16 disrespect to the Court. Then I will call it
17 unreasonable.

18 THE COURT: As a matter of appeal, the
19 Superior Court will ultimately decide that.

20 BY MR. GIBSON:

21 Q. Let me just suffice it to say, are you aware, and
22 I won't read them into the record, but I certainly would
23 like to submit this into evidence as well, that there
24 are other instances, Mr. Roda, of public outcry over
25 this settlement? Are you aware of that?

1 THE COURT: I'm only aware of one article.
2 Were there more?

3 MR. GIBSON: I'm just asking Mr. Roda. I'm
4 sorry, Your Honor.

5 THE WITNESS: I don't know what you mean by
6 public outcry. I am aware of the articles that were
7 brought to my attention about this. I'm aware of two.

8 One ran, I believe, on Friday or Saturday in
9 the Lancaster New Era. Or perhaps it was a Saturday,
10 would have been the combination paper now.

11 Another ran in the Sunday News. The article
12 that you mentioned a moment ago, which I was not aware
13 that you had sent to me, I saw it on my own.

14 MR. GIBSON: Your Honor, if I could just
15 have another minute to check my notes? I think I'm
16 going to wrap up.

17 THE COURT: Sure.

18 MR. GIBSON: I think that's all I have, Your
19 Honor. I did want to address some preliminary
20 housekeeping things that came up. I don't know if I
21 should wait until the end of the presentation of
22 Mr. Roda's case.

23 THE COURT: At this point, we should do
24 that.

25 Mr. Roda, anything you want to say on

1 redirect?

2 MR. RODA: Yes, it's a hybrid comment here.
3 I guess I would mention this, Your Honor. We do not
4 contest the right of an objector to file an appeal in
5 this case or in any other.

6 What we are here about is objectors' counsel
7 demanding \$100,000 to walk away from that appeal, an
8 appeal that he purports to be in the best interest of
9 the class; and \$100,000 that would be shared in no way,
10 shape, or form with the class. That is the issue that
11 his filing an appeal was conditioned on or not filing an
12 appeal was conditioned on, getting a payment of
13 \$100,000. Frankly, it is -- it has the ring of judicial
14 hush money.

15 I would also raise this question
16 procedurally. This is certainly a first for me.

17 THE COURT: And me.

18 MR. RODA: We have had the sequestering,
19 which is fine. I did not mind that. But we have a
20 situation here where the person who has asked for the
21 sequestering and who is going to examine the next
22 witness is himself going to be a witness.

23 THE COURT: I don't know how you avoid that.

24 MR. RODA: We can't sequester him. What I
25 would like as a compromise is to have him testify now

1 before he hears what the others say. And if he wants to
2 make any rebuttal after they testify, he can do that.
3 But I'd like to have at least some uninfluenced
4 testimony on his part.

5 MR. GIBSON: I'm fine with that, Judge. I
6 just have one brief recross question based on his
7 redirect.

8 If I may, for the Court, my intention is not
9 to have us here all afternoon either. I believe the
10 testimony of Mr. Roda is the most key, and I don't
11 believe that the other witnesses are at least on my end
12 going be very long. It's Mr. Roda's testimony which
13 was --

14 THE COURT: Okay. Do your recross.

15 RECROSS EXAMINATION

16 BY MR. GIBSON:

17 Q. Mr. Roda, you made a brief little speech as your
18 redirect, stating that the settlement was -- the upshot
19 was that the settlement was \$100,000, without conferring
20 any benefit on the class; is that correct?

21 A. Correct.

22 Q. And once again, isn't it true, Mr. Roda, that I
23 repeatedly took the position during our telephone
24 conversation, although you may disagree with it, I took
25 the position that the objection resulted in among other

1 things the fee being reduced by one million; isn't that
2 true?

3 A. You took that position only after demanding the
4 \$100,000 without any explanation or justification for it
5 other than you were going to file an appeal. If we paid
6 you the hundred thousand, you wouldn't file an appeal.

7 You didn't mention your justifications until
8 asked about it. You didn't mention the public benefit
9 until it was mentioned by me that not a dime of the
10 reduced fees were going to go to the class.

11 BY MR. GIBSON:

12 Q. Once again, didn't I mention it during our
13 telephone conversation?

14 A. In that sequence, yes.

15 MR. GIBSON: I have nothing further, Judge.

16 THE COURT: All right, put Mr. Gibson under
17 oath.

18 MR. RODA: Your Honor, I just might ask
19 this. Mr. Gibson just said that he didn't believe the
20 presentation of his witnesses, plural, would take --

21 THE COURT: How many witnesses do you have?

22 MR. RODA: What other witnesses do you have?

23 MR. GIBSON: When I said witnesses, I meant
24 cross examination of Miss Burkholder and --

25 THE COURT: So you don't have anybody else

1 besides yourself?

2 MR. GIBSON: I have affidavits from the
3 Kairises, and that's what I wanted to address in
4 housekeeping with the Court. It's also germane to my
5 testimony, so I think it might behoove if we could
6 bring --

7 THE COURT: Let's hear your testimony.

8 MR. GIBSON: Fine.

9 THE COURT: Tell whatever you want to say,
10 or do you want to be called as Mr. Roda's witness?

11 MR. GIBSON: No, I'll testify on direct. My
12 throat is dry. If I could take a quick drink of water.

13 THE COURT: He could call you as on cross, I
14 presume, but he'll get that opportunity.

15 MR. GIBSON: Thank you.

16 ROBERT GIBSON,
17 called as a witness, having been duly sworn or affirmed,
18 was examined and testified as follows:

19 DIRECT TESTIMONY

20 MR. GIBSON: Your Honor, as you are aware, I
21 appeared at the final fairness hearing and strenuously
22 objected to this settlement.

23 I guess as part of being an advocate, if I
24 use -- and the Court approved that settlement. And part
25 of my job as an advocate, sometimes I use words that are

1 strong. I mean no affront to the Court when I
2 characterized the settlement as unfair.

3 THE COURT: I understand.

4 MR. GIBSON: I understand the Court's
5 reasons for entering it, and I have other legal views.
6 I just want to make sure that the Court is aware of
7 that.

8 I did have a telephone conversation with
9 Mr. Roda following the final fairness hearing, and I
10 indicated to Mr. Roda that it was my position that our
11 objection had conferred a benefit upon the class by
12 having attorneys' fees reduced by one million dollars.

13 I explained to Mr. Roda that my rationale
14 was that after the objection was filed, he reduced his
15 fee. Mr. Roda said that he thought that the objection
16 didn't have the effect of reducing the -- his fee by a
17 million dollars, that he did that, quote, unquote,
18 voluntarily.

19 I disagreed with Mr. Roda and told him that
20 it was telling that he hadn't cut his fee in half until
21 I showed up at the final fairness hearing and requested
22 a copy of the fee petition, which he never even served
23 on me. And then he seemed quite suspicious. Then
24 spontaneously he reduced his fee by or voluntarily
25 reduced his fee by half only after that occurrence, when

1 he had time beforehand to do that.

2 I also explained to Mr. Roda that it further
3 benefitted the class by and the public in general by
4 guarding against the perception that class action
5 attorneys are the only winners in class action cases,
6 and that essentially that the consumers get left holding
7 the short end of the stick.

8 I believe that my belief in that benefit
9 later has been sort of confirmed, that there has been
10 public outcry -- even if there's public outcry over the
11 fact that the firm got 884,000, I can only imagine the
12 outcry if they got two million for this settlement.

13 It even warranted an article in the local
14 Sunday newspapers. It didn't take attorneys to pick up
15 on this, this is just common people.

16 It was never discussed -- after -- and I
17 indicated that since the fee was reduced by a million
18 dollars and that we conferred a benefit, that our demand
19 to settle the case was \$100,000.

20 Mr. Roda then -- I didn't volunteer
21 anything. Mr. Roda then asked how that would be split.
22 And I said -- I didn't tell him -- I didn't give him --
23 he did tell the truth, that I didn't give him an answer.
24 I told him I have an agreement with my clients, and
25 that's between me and my clients.

1 It was never -- and this was a short
2 telephone conversation. As Mr. Roda now suggests that
3 it's required to have Court approval for a settlement in
4 a class action case, I mean I still am waiting to hear a
5 case that says that.

6 But as Mr. Roda admitted on direct -- or
7 pardon me, on cross examination, we never even got that
8 far as to whether or not any settlement would require
9 Court approval. So that was never even discussed or
10 contemplated during our brief telephone conversation.

11 Mr. Roda -- after that conversation, I got a
12 call, I think, late that afternoon from Mr. Roda,
13 leaving me a telephone message asking him -- or telling
14 me that he would call me back the next day. So I did
15 not call him back.

16 The following morning, Michele Burkholder
17 called me, told me she was calling at Mr. Roda's
18 direction, and they wanted to set up a call for, I
19 believe, it was 3:30 that afternoon.

20 During that telephone call, Mr. Roda asked
21 me to reiterate my basis for the figure that I had
22 requested in our previous conversation. I had told
23 Mr. Roda, and this is my -- I can't say verbatim, but my
24 best characterization, that I had asked him to relate
25 that to GM's counsel and that I'm sure that he had done

1 that and I was not going to sit around and repeat --
2 repeat myself, and that they were aware of it.

3 GM's counsel then asked me why should they
4 have to pay anything, if anything. Again, this is --
5 I'm trying to generally reconstruct it.

6 I said, really, that's on your end, that's
7 not -- the upshot of what I said was consistent with
8 what Mr. Roda testified, that's really between the other
9 end of the -- the parties on the other end of the call.

10 I am not aware -- I'm still not aware of any
11 Pennsylvania case that says that you cannot have a --
12 settle a private objection without Court -- that it is
13 required to have Court approval. I still have not found
14 a case myself. I haven't gotten one from Mr. Roda.

15 That being said, it never came up that that
16 would be a requirement. In other words, Mr. Roda never
17 said, for instance, on the phone call, well, we would
18 like to address the settlement but we believe that we
19 need Court approval. It never got that far, Your Honor.

20 I still am of the position, and I know that
21 Mr. Roda disagrees with me and claims that his reduction
22 was voluntary, that our objection reduced -- caused the
23 million dollar reduction in attorneys' fees and the
24 benefit to the class.

25 We are willing to settle -- we were willing

1 to settle the case to avoid the risks of further -- I
2 believe that we had a strong argument for getting
3 further benefits on appeal. Specifically I mean the
4 attorneys' fees issue I believe we prevailed on when we
5 were attacking the attorneys' fees. But we had also
6 attacked the reasonableness of the settlement and
7 specifically in the sense that Mr. Roda's claiming that
8 because of the pending bankruptcy, that this had to be
9 done.

10 But there's not even a provision in the
11 settlement agreement that these coupons are not
12 dischargeable in bankruptcy.

13 And then there's also the major issue of the
14 fact that these coupons couldn't be used for
15 lesser-priced GM products, such as parts and service,
16 only for big ticket items, which as the Court knows is
17 warranted against.

18 This was a negotiation for a settlement
19 knowing that there are risks on appeal. I believe that
20 we have very meritorious claims, but not me, not
21 Mr. Roda, not Your Honor knows what the outcome of an
22 appeal would be.

23 So the whole purpose of a settlement is that
24 we have conferred this benefit and would like to settle.
25 But if there was no discussion of settlement, that we

1 will proceed with the appeal. We believe that we have a
2 strong legal case to gain even more benefits for the
3 class and come back to the Court and request instead of
4 awards and attorneys' fees and the like.

5 And so this was in the context of a brief,
6 cut-short settlement negotiation where a lot of the
7 sectors that Mr. Roda is trying to raise never even came
8 to be discussed.

9 I think that I believe that the motivation
10 behind this is the pending bankruptcy for GM and for
11 Mr. Roda to collect his fee before the bankruptcy goes
12 through. And I think that that is as transparent as can
13 be.

14 I want to review my notes and see if there's
15 anything else I need to get into the record for direct,
16 and then I'm ready for cross-examination, Judge.

17 Your Honor, also simply because Mr. --
18 there's been issues raised as far as propriety of
19 settlements, of private settlements in class action
20 cases.

21 I have dockets in two cases, and I have seen
22 others online where there have been private settlements
23 in class action cases where Mr. Roda's counsel was
24 either lead counsel or counsel in the case.

25 THE COURT: Private settlements with

1 objectors, you mean?

2 MR. GIBSON: Private settlements with
3 objectors, where there's no indication on the dockets
4 whatsoever that there was any hearing required for
5 approval of those settlements.

6 THE COURT: But the docket reveals that
7 there was settlement?

8 MR. GIBSON: The docket speaks for itself.
9 What the docket reveals is that there were appeals
10 taken. And then that by agreement of the parties, the
11 appeals were voluntarily dismissed.

12 In the Nichols case, I specifically spoke
13 with John Weston, who was local counsel for the
14 objectors, and who confirmed that there was a financial
15 payment. And I have the dockets for that and I have for
16 the Nichols case.

17 And then I also have a docket in the
18 Reinhouse versus GlaxoSmithKline case. And there are
19 others, but these are two examples that I wanted to
20 submit into the record because I am aware that
21 Mr. Roda's firm has been involved in class action cases
22 where there have been private settlements, and that I
23 have the dockets to show that there's no reflection in
24 the dockets at all that there's any type of hearing,
25 that those settlements required Court approval.

1 MR. RODA: Please note my objection to the
2 hearsay statement about what Mr. Watson, I believe his
3 name is, said.

4 MR. GIBSON: Weston.

5 MR. RODA: Mr. Weston said.

6 THE COURT: So noted. And to the extent it
7 becomes more relevant, I'm sure we may have to hear more
8 in this case.

9 MR. GIBSON: Okay. And I believe that
10 that's all that I have on my direct testimony.

11 THE COURT: You may cross, Mr. Roda.

12 CROSS EXAMINATION

13 BY MR. RODA:

14 Q. Mr. Gibson, are you an attorney in good standing
15 in Pennsylvania?

16 A. Yes.

17 Q. Have you ever been suspended by the Pennsylvania
18 Supreme Court for any offense?

19 A. Yes.

20 Q. How many times?

21 A. Once.

22 Q. For how long?

23 A. One year.

24 Q. For what conduct?

25 A. I was involved in -- ten years ago I was --

1 before my children were born, I was involved in a bar
2 fight, and police responded to the bar fight. And as a
3 result, when the police responded, I was extremely
4 intoxicated. And one of the officers was struck.

5 As a result of that, I was convicted of assault
6 and related charges and sought substantial help for my
7 drinking problem. Like I said, that was before my
8 children were born. That was ten years ago.

9 Even though it had nothing to do with the
10 practice of law, my license was suspended for one year,
11 and it was immediately reinstated. And I have been in
12 good standing ever since.

13 Q. Before April 28, 2009, had you and I ever met or
14 spoken?

15 A. When?

16 Q. Before the final approval fairness hearing in
17 this case on April 28, 2009, had you and I ever met or
18 spoken?

19 A. I had sent you correspondence on March 6, which
20 consisted of the objection and my notice of intent to
21 appear by certified mail return receipt, which I believe
22 I got copies back from your firm.

23 Then on April 6, again, before the final fairness
24 hearing, I filed my entry of appearance with the Court
25 and I mailed you a time-stamped copy, I believe again

1 certified, of my entry of appearance and then also
2 refiled so they were time-stamped, the objection and the
3 notice of intention to appear.

4 Q. My question is, had we ever met or spoken?

5 A. No. I mean I have corresponded with you, but I
6 have never spoken with you.

7 Q. You said at the final fairness hearing, final
8 approval hearing, I believe is the quote, I do a lot of
9 class action work. In what cases have you ever been
10 named as class counsel?

11 A. I participated in the In Re Bridgestone Firestone
12 case. And I also -- this is going back, believe I
13 participated in the -- I was listed in the In Re Bake
14 All products liability, if that's the name of the --

15 Q. You say you participated. Are you counsel of
16 record in either of those cases?

17 A. I should be.

18 Q. What was your participation?

19 A. I participated in depositions. I participated in
20 briefing.

21 Q. Who was your client in those cases?

22 A. Geez, we're going back several years. I can find
23 that out. I just don't know off the top of my head.

24 Q. Have you ever filed an objection to any class
25 action settlement other than this one?

1 A. This is the only one.

2 Q. Do you have a fee agreement, a retainer
3 agreement, an attorney-client agreement with Mr. and
4 Mrs. Kairis for your representation of them in this
5 case?

6 A. I have a retainer agreement, yes.

7 Q. Did it -- does it provide for the distribution of
8 any amount you recovered in this case for them or
9 yourself?

10 A. Could you repeat the question? I'm sorry.

11 Q. Yes. Would it apply to any payment that you had
12 received if we had agreed to pay you?

13 A. Well, that implies that the payment was only to
14 me, not to the clients and to me. So I don't know if I
15 can really answer that question, but I can perhaps cut
16 to the chase.

17 Attached to the affidavits that I have from Mr.
18 and Mrs. -- actually, I have been mispronouncing it.
19 It's pronounced Kairis.

20 I have attached the retainer agreement, which
21 speaks for itself, if that would be -- I think that
22 would be helpful to counsel and the Court, but I have
23 copies for everybody that I brought with me.

24 Q. I will look at that. Did they know of your call
25 to me after the final fairness hearing, the one where

1 you left a voicemail?

2 A. Were they aware of my telephone call with you?

3 Q. Did they know that you were going to make a call
4 to me or that you did make a call to me?

5 A. I believe so.

6 Q. Are you sure?

7 A. That's as sure as I can be.

8 Q. Did you tell them what you were going to demand?

9 A. Again, I'm not represented by counsel.

10 THE COURT: Neither was he.

11 MR. GIBSON: I know. No, no, I'm just
12 prefacing. But I'm going to have to object to any
13 communications my clients -- and they also state this in
14 their affidavits -- have not waived the attorney-client
15 privilege. I am not permitted to waive the privilege
16 for them, and I cannot divulge my strategic discussions
17 with my clients.

18 BY MR. RODA:

19 Q. Did you report to them our conversation?

20 A. Did I report to them?

21 Q. Yes. The first day, did you tell them of the
22 telephone call that I placed to you and what was said in
23 that call?

24 A. The first call when you called me back?

25 Q. April 28, yes.

1 A. I spoke to them subsequent to that, I don't
2 remember exactly when.

3 Q. Was it the same day?

4 A. I don't recall.

5 Q. Did you report to them the call of the next day,
6 the one in which GM's counsel participated?

7 A. I did report to them. I don't recall when.

8 Q. Did they authorize you to demand \$100,000?

9 A. Again, I'm going to have to object, and I can't
10 waive the privilege for them.

11 Q. Do they know -- did they know of the Court's
12 order directing them to appear here today?

13 A. Yes.

14 Q. Did they choose not to appear today, or did you
15 advise them not to appear?

16 A. They were unable to appear because they are both
17 employed and work in the Scranton area and were not able
18 to come the five-hour trip because of their jobs to be
19 here.

20 And that was why in the interest of fact-finding
21 and justice, I prepared these affidavits, which I
22 believe cover what is -- what the Court would need to
23 conduct this evidentiary hearing.

24 Q. So you made the determination on your own to
25 proceed by affidavit rather than have them appear?

1 A. No.

2 Q. You made the determination on your own to bring
3 their affidavits rather than ask the Court if you could
4 proceed that way?

5 A. No, I did not. I advised -- the clients were
6 aware that there was the hearing.

7 Q. Were the clients aware of the letter that you
8 sent to the Court on May 15, saying that you were not
9 going to appear and that you were advising the Court of
10 that as a professional courtesy?

11 A. That the objectors were not going to appear, yes.

12 Q. You're saying your letter said the objectors
13 would not appear, as opposed to you?

14 A. I believe it says objectors do not intend to
15 appear, my best recollection. I don't have it in front
16 of me, but if you want to put it in front of me.

17 Q. I have it here.

18 A. I have it.

19 THE COURT: Objectors do not intend to
20 appear. Frankly, I took that to mean you weren't coming
21 either, but obviously you're here.

22 MR. GIBSON: Yes, I intended to be here.

23 THE COURT: It was a distinction I missed,
24 counsel for objectors.

25

1 BY MR. RODA:

2 Q. When you stood up to speak to the Court, did you
3 believe -- which was after I spoke, did you believe you
4 and your objection had caused a reduction in the
5 attorneys' fees?

6 A. Repeat that question again.

7 Q. When you stood up at the final fairness hearing
8 to speak, which was after I spoke, did you believe that
9 your objection had caused the reduction in the counsel
10 fee and under your theory had benefitted the class?

11 A. Yes.

12 Q. Did you -- you would agree, you did not when you
13 stood up to speak ask for any fee or payment to your
14 clients?

15 A. I don't believe that that would have been the
16 appropriate time.

17 Q. When I called you back, did I identify that
18 Ms. Burkholder was in the room?

19 A. You did.

20 Q. Did I identify that you were on speaker?

21 A. You did.

22 Q. Did you first mention the \$100,000 as a demand to
23 me -- strike that.

24 Did you first say that you were going to file an
25 appeal unless we could get this resolved?

1 A. I don't believe -- I don't believe that that --
2 again, I don't have a chronology of it, but I don't
3 believe that would even make sense because I -- if we
4 could get it resolved, I don't know if we would be
5 discussing logically.

6 Q. Whether it makes sense or not isn't my question.
7 Did you say to me after I introduced who was there, that
8 we were on speaker, did you say that you were going to
9 file a notice of appeal unless we could get the matter
10 resolved or worked out or settled?

11 A. I do not believe that those were my exact words,
12 no.

13 Q. What were your words; were they to that effect?

14 A. No. The upshot of my conversation with you
15 was --

16 Q. The opening conversation, not the entire
17 conversation, the opening statement after the
18 introduction, the first thing you said.

19 A. It was a less than a five-minute conversation.
20 The first thing I said to you fully, if I recall the
21 conversation correctly, that I was interested in
22 discussing settlement or resolution.

23 First thing you said to me was, well, how can we
24 do that, the Court's already approved settlement, it's a
25 done deal.

1 Q. And did I ask you --

2 A. That's my recollection.

3 Q. Did I ask you what you were talking about, what
4 you had in mind, what you meant? Did I not then ask
5 that after you just -- after the opening statement?

6 A. Repeat that again.

7 Q. Did I ask you what you had in mind, what the
8 purpose of your call had been?

9 A. I told you that we were interested in resolving
10 the case. You said, What? I told you the figure, and
11 you said, How do you justify that?

12 And I told you that we conferred a benefit on the
13 class by having the fees reduced by a million and for
14 all the reasons I have already stated that you already
15 admitted that I said.

16 Q. How would the \$100,000 have been split between
17 you and your clients?

18 A. I have the fee agreement.

19 Q. Tell us what it says.

20 THE WITNESS: Would you like me to hand a
21 copy up to the Court?

22 THE COURT: Go ahead and just tell him.

23 THE WITNESS: It's a letter addressed to
24 Karen and George Kairis. Dear Karen and George --

25 THE COURT: Dated?

1 THE WITNESS: March 13, 2009.

2 MR. RODA: Your Honor, could we have the
3 copies? Let me take a look at it, maybe I can direct a
4 pointed question as opposed to having the whole thing
5 read.

6 THE COURT: Yes, give me one.

7 MR. RODA: Your Honor, I would like to have
8 this packet identified for the record as an exhibit, and
9 I believe -- how would Your Honor like it? We had K-1.

10 THE COURT: You don't have a 1 yet, do you?

11 MR. RODA: We do not. Or Soders 1.

12 MR. GIBSON: If it makes the record clear.

13 THE COURT: I want to make it clear because
14 there are a lot of exhibits if this thing is going up.

15 MR. GIBSON: We intend to submit these
16 anyway, so if you want to keep them.

17 MR. RODA: They could be Court exhibits.

18 THE COURT: E.H., extradited hearing, S-1.

19 MR. RODA: E.H.S. 1.

20 THE COURT: Which is Expedited Hearing
21 Soders.

22 MR. RODA: Very good.

23 BY MR. RODA:

24 Q. So Mr. Gibson, under this, you would have
25 received \$90,000 of a \$100,000 payment; correct?

1 A. It contemplates two scenarios, which we never got
2 to discuss, okay? It says if there is a settlement
3 pertaining to the objection, which you now said can't be
4 done, you will receive 10 percent of any such
5 settlement.

6 Then it also contemplates if the Court approval
7 is required, if there's no settlement but the Court
8 sustains the objection, I will petition the Court for
9 payment of my attorneys' fees as well as incentive
10 awards for you. But that was never discussed during our
11 conversation.

12 Q. My question is, if the \$100,000 payment had been
13 made, you would under this have received \$90,000;
14 correct?

15 A. You are asking me a hypothetical question if
16 there was a private settlement.

17 Q. If there had been a payment of the type you
18 demanded, you would have received \$90,000, 90 percent of
19 that; correct?

20 A. Not necessarily. We never addressed the issue.
21 You take two positions. You say, one, we can't have a
22 private settlement or we have to have Court approval.
23 So it was the hundred thousand. Then we would have to
24 go to the Court. And part of that would have to be
25 requested as attorneys' fees, I imagine, and part of

1 that would have to be requested as an incentive award,
2 but that was never discussed.

3 Q. You see the sentence in here that says if there
4 is a settlement pertaining to the objection, you will
5 receive 10 percent of any such settlement?

6 A. I see that.

7 Q. My question again, under that sentence, you would
8 have received \$90,000 of the \$100,000 payment that you
9 demanded; correct?

10 A. If there was a private settlement, yes.
11 Similarly, if there was a \$50,000 settlement, I would
12 have received 45.

13 THE COURT: And what would the class get?

14 MR. GIBSON: Pardon me?

15 THE COURT: What would the class get?

16 MR. GIBSON: As I have already stated, the
17 benefit to the class is their reduction in the
18 attorneys' fees.

19 THE COURT: Class wasn't getting any benefit
20 of that.

21 MR. GIBSON: Well, there's -- as I read and
22 even under the rule, Mr. Roda cites to Rule 1714
23 somewhere in one of his briefs. Pardon me, 1716.

24 It talks about fees and factors. And one of
25 them, it says the results achieved and benefits

1 conferred upon the class or upon the public.

2 THE COURT: Your position is that applies to
3 objectors as well as the --

4 MR. GIBSON: My position is that there's
5 been a benefit upon class members that that perception
6 of counsel benefitting from unreasonable fees in certain
7 types of settlements and also the public, and I made
8 that very clear to Mr. Roda during our telephone
9 conversation, which he acknowledges.

10 THE COURT: So it's the public benefit that
11 you are claiming?

12 MR. GIBSON: Well, class also.

13 THE COURT: Well, again, where did the
14 class --

15 MR. GIBSON: Well, members of the class may
16 also. I mean there was that lady that came in here who
17 was --

18 THE COURT: What did she get? What was she
19 going to get if he would have said or GM would have
20 said, okay, here's \$100,000.

21 MR. GIBSON: She gets the same.

22 THE COURT: What does she get out of it?

23 MR. GIBSON: She gets the same benefit that
24 members of the public get, that there isn't a perception
25 that Mr. Roda gets two million dollars for giving them

1 nothing. At least he gets significantly less.

2 THE COURT: How does she even know? How
3 does anybody even know? If what I'm hearing is the
4 case, you would have not appealed then if everything
5 went away. Who knows what --

6 MR. GIBSON: Say again, I'm sorry.

7 THE COURT: The settlement would be 100,000.
8 You don't appeal; is that right?

9 MR. GIBSON: The position was that we have
10 conferred this benefit on the class. At this stage,
11 we're willing to settle.

12 And that benefit and reduced fee and part of
13 my objection -- and this was not a boilerplate
14 objection. If the Court recalls, there was a lot of
15 case law.

16 THE COURT: Oh, I know that.

17 MR. GIBSON: I'm not a professional
18 objector. This is --

19 THE COURT: I'm only talking now about where
20 the posture of the case is. The settlement is no
21 appeal.

22 MR. GIBSON: Well, if we settle at this
23 point, one of the major things we attacked was the
24 reasonableness of the settlement and the reasonableness
25 of the fee.

1 My position has always been that we
2 conferred a benefit by having the fee reduced by one
3 million dollars.

4 THE COURT: Again, on who, other than you're
5 saying the public as a whole?

6 MR. GIBSON: And including members of the --
7 well, class members are members of the public, but yes.

8 THE COURT: So there's no direct pecuniary
9 benefit to the class of this --

10 MR. GIBSON: No, and I'm not arguing that
11 that money went to the class. There's a different issue
12 that Mr. Roda has a fiduciary duty instead of giving
13 that back to GM, should have used that to the benefit of
14 the class. And that's a different issue.

15 Hundred thousand was for conferring the
16 benefit of the reduced attorneys' fees by one million
17 dollars. We felt, and it is stated in our objection,
18 there were other defects with the settlement.

19 But there's risks on appeal. That's why
20 this was a settlement negotiation or attempt at a
21 settlement negotiation.

22 THE COURT: All right, I have interrupted.

23 MR. GIBSON: We're going to proceed with the
24 appeal, and we have other areas. We will bear the risks
25 of litigation. If that's -- if we can't settle, there's

1 other areas we think that we have a legitimate basis for
2 approval.

3 BY MR. RODA:

4 Q. Mr. Gibson, you just mentioned your perception
5 that our firm had a fiduciary obligation to take the
6 money as a fee and distribute it to the class. You have
7 never raised that in any of our discussions until just
8 now; isn't that correct?

9 A. I mentioned your fiduciary duty. Mr. Roda, I
10 have had two very brief discussions with you. In our
11 discussions, no, but it's been mentioned in my briefing.

12 MR. RODA: I just asked in the discussions,
13 you have concurred that you never mentioned it.

14 Your Honor, that's all that I have at this
15 point.

16 THE COURT: Anything else you want to say on
17 redirect?

18 MR. GIBSON: Simply that for instance, the
19 case had -- you know, Judge, there's nothing else I need
20 to say.

21 MR. RODA: I will bring the others in.

22 THE COURT: Yes.

23 MR. RODA: Your Honor, I will ask
24 Mr. Underhill, since his will be shorter, to speak
25 first.

1 THE COURT: Go up.

2 MR. GIBSON: Your Honor, if I may before, I
3 also have a case that speaks about creating a public
4 benefit.

5 THE COURT: You will get an opportunity.

6 MR. GIBSON: If I may, I don't have it.
7 It's either in my paperwork or --

8 THE COURT: Let's conclude the testimony,
9 and then we'll talk about the other issues.

10 CHRISTOPHER UNDERHILL,
11 called as a witness, having been duly sworn or affirmed,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RODA:

15 Q. Mr. Underhill, I think the Court can take
16 judicial notice, you are an attorney here in Lancaster?

17 A. I am.

18 Q. How long?

19 A. January 19 -- in Lancaster, I started before I
20 got admitted before the Supreme Court because my car
21 broke down on the way to get admitted. So I have been
22 here since September of 1966, but I was admitted before
23 the Supreme Court January 1967.

24 Q. And you are counsel with Hart, Underhill, and
25 Brubaker?

1 A. I am.

2 Q. And you have been local counsel for GM throughout
3 the Soders versus GM litigation, have you not?

4 A. I have been.

5 Q. You were at the fairness hearing on April 28,
6 were you not?

7 A. I was.

8 Q. That afternoon, did you receive a call from me?

9 A. I did.

10 Q. Could you tell His Honor, please, to your best
11 recollection of what was said between you and me in that
12 call.

13 A. I was advised that Mr. Roda had received a
14 telephone call from Mr. Gibson saying that he was going
15 to take an appeal from the order approving the
16 settlement unless some kind of arrangement or settlement
17 could be made between Mr. Gibson and Mr. Roda, where
18 money would go to Mr. Gibson's clients.

19 Presumably, whatever money did not go to the
20 clients would go to him. And the number I was told, it
21 was \$100,000.

22 Oh, and then Mr. Roda told me that Mr. Gibson had
23 suggested perhaps GM would pay the hundred thousand.

24 Q. What happened next in the sequence of events
25 involving that matter, Mr. Gibson's discussion with me,

1 to your recollection?

2 A. As I recall, we then had a three-way conversation
3 between myself, you, and Mr. Lipps, to discuss the
4 demand from Mr. Gibson, and we agreed to talk to
5 Mr. Gibson to confirm what you had related to us --

6 Q. Okay. What was your --

7 A. -- that took place.

8 Q. What was your reaction, if I might ask you to
9 recall, when I reported Mr. Gibson's demand?

10 A. I thought it was outrageous.

11 Q. What to your recollection was Mr. Lipps'
12 reaction?

13 A. The same.

14 Q. Was that discussed, to your recollection, among
15 the three of us when we talked?

16 A. It was discussed. I don't think I can recall the
17 details, except we were all in agreement that it was an
18 outrageous demand and something ought to be done.

19 Q. What do you recall next then after that
20 discussion first between you and me and then the
21 three-way with Mr. Lipps moving to the next day? Was
22 there a discussion that involved Mr. Gibson?

23 A. Yes.

24 Q. Would you please tell His Honor your best
25 recollection of that.

1 A. Well, it was a four-way telephone conversation.
2 Mr. Roda, myself, Mr. Lipps, and Mr. Gibson, in which we
3 attempted to pin down the accuracy of what had been
4 reported to Mr. Lipps and to me by Mr. Roda and
5 Mr. Gibson.

6 When we asked him, did you want GM to pay this,
7 he said, That's up to you. But he confirmed the
8 \$100,000 figure, that that was the settlement price to
9 avoid an appeal of your decision, Your Honor.

10 Q. What, if anything, do you recall about Mr. Gibson
11 giving us a timeline or a deadline?

12 A. What I recall is he said he would do it by the
13 end of the week. I'm not sure I remember exactly which
14 day of the week we had that conversation, but I think it
15 might have been a Wednesday.

16 Q. What happened next in terms of the steps?
17 Specifically, do you recall a conversation that we
18 placed to Judge Farina?

19 A. Yes.

20 Q. For the record, could you tell us your
21 recollection of that conversation.

22 A. It was essentially we advised the Court of the
23 telephone conversations with Mr. Gibson and said that we
24 wanted to bring the matter to the Court's attention.

25 The Court just said that they recommended that we

1 move for an expedited hearing, which is what you did.

2 Q. Since that -- strike that.

3 For the record, have you prepared an affidavit or
4 declaration?

5 A. Yes.

6 Q. Handing you a copy of it which we will mark as
7 E.H.S.-2. Is that your declaration?

8 A. Yes.

9 Q. And your signature?

10 A. Absolutely. No one else could write like this.

11 MR. RODA: That's all I have. Thank you.

12 THE COURT: Mr. Gibson?

13 MR. RODA: Just for the record, is your
14 declaration accurate?

15 THE WITNESS: Yes.

16 MR. RODA: Thank you.

17 CROSS EXAMINATION

18 BY MR. GIBSON:

19 Q. Good afternoon, Mr. Underhill.

20 You testified about two conversations that you
21 had with Mr. Roda, the first conversation that you had
22 with Mr. --

23 A. Strictly speaking, there were three conversations
24 in which Mr. Roda and I were involved.

25 Q. I understand; you're right. You're right.

1 Regarding the first conversation where Mr. Roda
2 called you?

3 A. Yes.

4 Q. And he gave you his version of our telephone
5 conversation?

6 A. Yes.

7 Q. In that conversation, he mentioned that the
8 settlement demand by the objectors was a hundred
9 thousand?

10 A. He said that you had demanded on behalf of the
11 objectors a hundred thousand.

12 Q. And did he mention that counsel for objectors had
13 taken the position that the objection had conferred a
14 benefit on the class by having class counsel fees
15 reduced by a million dollars? Did he mention that?

16 A. I don't recall if he mentioned it in the first
17 conversation or the second, when Mr. Lipps participated,
18 but that suggestion arose.

19 Q. During your conversation with Mr. Roda?

20 A. Either the first or the second. I don't remember
21 which one.

22 Q. But I was not a party to either of those
23 conversations; is that true?

24 A. You were not.

25 Q. So the version of the rationale for the

1 settlement you didn't receive from me, you received from
2 Mr. Roda; is that correct?

3 A. I wouldn't have called it a rationale, I would
4 have called it a settlement demand.

5 Q. No. But I mean as far as the benefit conferred
6 upon the class, Mr. Roda communicated that to you, not
7 me?

8 A. That's correct.

9 Q. In fact, when we had our one and only telephone
10 call -- first of all, that call was extremely short, was
11 it not?

12 A. Which one?

13 Q. We only had one phone call.

14 A. I'm sorry, where you participated?

15 Q. Yes.

16 A. I'd call it short. I don't know about extremely.

17 Q. Less than five minutes?

18 A. That seems about right.

19 Q. As you say here in your affidavit, when Mr. Roda
20 asked me to re-explain the rationale, I stated on the
21 call that I wasn't going to reiterate my rationale, that
22 I already conveyed it to Mr. Roda and I presumed he
23 conveyed it to you. Is that true?

24 A. I think that's correct. You certainly said you
25 weren't going to explain anything in detail.

1 Q. Again, did I indicate that I had explained it to
2 Mr. Roda and that --

3 A. I don't remember.

4 Q. You don't remember, okay.

5 Was it Mr. Roda's decision to call Judge Farina?

6 A. I wouldn't call it a decision. There was a
7 discussion with the three of us about what, if anything,
8 should be done about the -- what Mr. Roda reported to us
9 about his conversation with you.

10 I would say it was a consensus. I can't remember
11 specifically any one of us saying, well, we got to go
12 see Judge Farina. But certainly that was the outcome of
13 the call.

14 Q. Who initiated the phone call?

15 A. You have to understand, I have a lot of
16 conversations with Mr. Lipps. And on one of them
17 recently, there was a conference call that didn't end
18 up -- whoever initiated it first, we lost it and we had
19 to call back. I don't think it was that one, so I think
20 it was Mr. Roda, but I'm not positive.

21 Q. Approximately how long did that telephone
22 conversation last?

23 A. With the three of us?

24 Q. Well, no, with the four of you; right? You,
25 Mr. Roda, Mr. Lipps, and Judge Farina.

1 A. That was short, by your definition. I think not
2 more than five minutes.

3 Q. So you don't think it could have been ten minutes
4 or longer?

5 A. I don't think it could be longer. It could be
6 between five and ten.

7 Q. Okay. In April of this year, did you receive my
8 time-stamped entry of appearance in this case?

9 A. I believe so.

10 Q. You were involved in negotiations with Mr. Roda
11 regarding his fee, and I know that GM ultimately agreed
12 not to object to a fee roughly of 1.8 million; is that
13 correct?

14 MR. RODA: Objection, Your Honor, the
15 statement about him being -- first part of that
16 question.

17 THE WITNESS: I will answer. No, I did not
18 participate in the mediation.

19 BY MR. GIBSON:

20 Q. Were you aware of the ongoings of the mediation?

21 A. No, I just learned the outcome after it was over
22 from Mr. Lipps.

23 Q. Did you know what Mr. Roda's initial demand was
24 for attorneys' fees before?

25 A. No.

1 Q. Would you assume it was higher than the 1.8
2 million?

3 A. I wouldn't assume it, no.

4 Q. Mr. Lipps, you have been practicing --

5 MR. RODA: It's Underhill.

6 BY MR. GIBSON:

7 Q. You have been practicing in Pennsylvania for a
8 lot longer than I have, and you mentioned it. How long
9 have you been practicing in Pennsylvania?

10 A. It will be 43 years this September.

11 Q. Is the large part of your practice devoted to
12 class action work?

13 A. No, very little.

14 Q. Are you involved in any other class action cases
15 besides the Soders class action case?

16 A. Not right now.

17 Q. Is your firm involved in any other class action
18 cases besides --

19 A. Not that I know of, but that doesn't mean we
20 aren't, I just don't know of everything.

21 Q. Is it possible your firm was local counsel in the
22 Highland Tank case?

23 A. Yes, yes, now that you mention the name.

24 Q. And that was a class case also?

25 A. I believe so.

1 Q. Mr. Underhill, are you aware of any Pennsylvania
2 cases that -- just as you sit here today -- that state
3 that there cannot be a settlement of a private objection
4 in a class action case without Court approval?

5 MR. RODA: Objection, Your Honor. For what
6 it's worth, it's beyond the scope of direct.

7 THE COURT: He can answer if he is aware or
8 not. Go ahead. Are you aware, Mr. Underhill?

9 THE WITNESS: State the question again. I
10 want to make sure I understand it.

11 BY MR. GIBSON:

12 Q. Are you aware of any cases in Pennsylvania that
13 state that you cannot have a private -- settlement of a
14 private objection in a class action case without Court
15 approval?

16 A. I'm not aware one way or the other.

17 Q. So that's a no?

18 A. Yes.

19 MR. GIBSON: I'm just going to check my
20 notes. I don't think I have much more. You are short.

21 THE WITNESS: Whatever.

22 MR. GIBSON: With the Court's permission,
23 I'm going to take a minute to read the affidavit.

24 I don't have anything further.

25 MR. RODA: Thank you, Mr. Underhill, I have

1 nothing further.

2 THE COURT: You may remain in the courtroom
3 now, Mr. Underhill.

4 MICHELE BURKHOLDER,
5 called as a witness, having been duly sworn or affirmed,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RODA:

9 Q. Miss Burkholder, you are an attorney with
10 RodaNast?

11 A. Yes, I am.

12 Q. And you have been an attorney with RodaNast for
13 how long?

14 A. Almost 11 years.

15 Q. And you have been on the case of Soders versus
16 General Motors from its inception?

17 A. Correct.

18 Q. Turning to April 28, 2009, what is the first
19 thing that you recall about a conversation or a call
20 from Mr. Gibson to me?

21 A. I received a call from you saying that you had
22 received a voicemail message from Mr. Gibson. You asked
23 me to come to your office to listen in on a telephone
24 conversation.

25 Q. Did you do that?

1 A. Yes, I did.

2 Q. It has been confirmed that we advised Mr. Gibson
3 that you were in the room and that he was on
4 speakerphone. During that conversation, did you take
5 notes?

6 A. Yes, I did.

7 Q. After that conversation, at my request, did you
8 put your notes into a memo?

9 A. Yes, immediately afterwards.

10 Q. I'm going to show you a document that I have
11 marked as E.H.S.-3. Do you recognize that?

12 A. Yes, I do.

13 Q. Is that the memorandum that you prepared?

14 A. Yes, it is.

15 Q. Now, to clarify immediately the question that may
16 arise with the date showing of May 20th, 2009, would you
17 please explain to His Honor why this memorandum that you
18 prepared immediately after has a date of May 20th on it?

19 A. Our computer system has an automated system where
20 it puts the date in on the memo. So whenever you print
21 out a memo, that's the date that that appears on the
22 memo, as opposed to the date when it was drafted in the
23 first place.

24 Q. When did you draft this into the computer in the
25 first place?

1 A. Immediately after we had the telephone
2 conversation.

3 Q. If you could take us --

4 THE COURT: Again, that date was what?

5 THE WITNESS: It was April 28th. It was
6 approximately two hours after we had our hearing here.

7 BY MR. RODA:

8 Q. Are the statements in your memorandum here, which
9 we have marked as E.H.S.-3, correct?

10 A. Yes, they are.

11 Q. Now, would you take us through with your best
12 recollection, and if you need to refer to the
13 memorandum, fine.

14 Could you tell His Honor what you recall about
15 that conversation when you came down to my office?

16 A. After Mr. Roda told Mr. Gibson that I was on the
17 telephone call --

18 MR. GIBSON: Objection, Your Honor. If she
19 needs to refresh her recollection, she's permitted to
20 refresh her recollection then. But she's not permitted
21 to read the document.

22 MR. RODA: I object to him saying what she's
23 permitted to do. She's confirmed this is accurate. My
24 question to her is clear. I think Your Honor has the
25 discretion of what she's permitted to do.

1 THE COURT: You have confirmed that it's
2 accurate.

3 THE WITNESS: Yes, I have.

4 THE COURT: I will permit her to use it to
5 the extent that you need it in your testimony. You say
6 it's accurate as to what you heard at the time?

7 THE WITNESS: Correct.

8 THE COURT: As you need it in your
9 testimony, you may use it to refresh your recollection.

10 THE WITNESS: Okay. Mr. Gibson said that he
11 obviously planned to file an appeal. He said that he
12 called Joe because he wanted to resolve this.

13 Joe asked Mr. Gibson what he meant by that.
14 Mr. Gibson said, Fine, I will go ahead and file a notice
15 of appeal. Joe asked him to wait. He said that he
16 wanted to explore it to make sure that he understood
17 what Mr. Gibson was asking for.

18 Joe said that the settlement had already
19 been approved, so he wasn't sure how they could resolve
20 it. And he asked Mr. Gibson what he had in mind.
21 Mr. Gibson then said, Do you understand what I am
22 getting at, Joe?

23 Joe said, I'm trying to understand what you
24 are proposing. Mr. Gibson then said that he proposed
25 that we enter into a settlement agreement with his

1 client. He said that the clients would be willing to
2 settle their objection for a specific sum and attorneys'
3 fees.

4 Joe asked what that amount would be, and
5 Mr. Gibson said that his clients demanded a total of
6 \$100,000 to be split between his clients and him and
7 that GM should pay this because of the savings that it
8 gained from not having to pay the full amount in
9 attorneys' fees.

10 Joe paused, and then he said that he doesn't
11 remember how many cars the client -- Mr. Gibson's
12 clients had purchased, but their recovery would only be
13 in the hundreds, so he wasn't sure how this -- how that
14 amount was determined.

15 He asked how much would go to the client and
16 how much would go to Mr. Gibson. Mr. Gibson said that
17 it would be divided pursuant to an agreement that he had
18 with his clients. He would not disclose what that
19 agreement was and what that split would be.

20 Joe said that it sounded like a large amount
21 and he needed to understand how Mr. Gibson came up with
22 it. Mr. Gibson said that it was for the benefit that he
23 conferred to the class by the objection that he had
24 filed. Joe asked what benefit, because the settlement
25 would just benefit his clients, how would that benefit

1 the class?

2 Mr. Gibson said that because of his
3 objection, we reduced our fee by \$800,000. Joe said
4 that the objection had nothing to do with his fee
5 reduction and that he already said that at the hearing.
6 Mr. Gibson said that he finds this hard to believe and
7 the timing is suspect.

8 Joe said that even for the purposes of
9 discussion if we were to assume that the objection was
10 responsible for the reduction in fee, how would that
11 benefit the class because the amount of money that was
12 being paid for the fee was not going to come from any
13 funds that would be paid by the class.

14 Mr. Gibson said that there were two reasons
15 for that. First, it would set a precedent so that
16 attorneys would not profit from weak settlements at the
17 detriment of consumers; and second, GM won't have to pay
18 the fee, which will benefit consumers.

19 Joe then asked Mr. Gibson if he wanted him
20 to set up a conference call with GM to talk about this.
21 Mr. Gibson said that he didn't care and it could be
22 through a conference call or that he could convey the
23 message to GM. Then Mr. Gibson again repeated that GM
24 should pay most, if not all, of the amount because of
25 what it was saving.

1 Q. Showing you a document marked as E.H.S.-4 and ask
2 if you recognize that.

3 A. Yes, I do.

4 Q. What is it, please?

5 A. It's the memorandum of a conversation that was
6 held between me, you, Chris Underhill, Jeff Lipps, and
7 Mr. Gibson on April 29.

8 Q. Would your explanation as to the May 20th date on
9 this be the same as what you gave for E.H.S.-3?

10 A. Correct.

11 Q. Okay.

12 A. Yes.

13 Q. Are the entries in this memorandum correct?

14 A. Yes, they are.

15 Q. Could you give us, as you just did with the
16 E.H.S.-3, your best recollection of the conversation
17 that day with Mr. -- the next day, April 29?

18 A. Once Mr. Roda had identified who was on the call,
19 he advised Mr. Gibson that he conveyed to Mr. Lipps and
20 Mr. Underhill what the demand was and his belief that GM
21 should take it and pay it.

22 He said he wanted to give Mr. Gibson a chance to
23 explain. He also said that he conveyed to Mr. Lipps and
24 Mr. Underhill that the demand was for \$100,000.

25 Mr. Gibson said that he would not reiterate his

1 demand. He said that they were both very experienced,
2 good lawyers, as is Joe, and they all understand the
3 risks that are inherent in an appeal.

4 He said that he plans on taking an appeal unless
5 we were able to work out something else. He said that
6 he would not repeat his demand, we know what his demand
7 is, and he will not play games and go back and forth on
8 this.

9 Mr. Roda then noted that Mr. Gibson said that GM
10 should pay his demand of \$100,000, and he repeated that
11 he wanted to give Mr. Gibson a chance to explain.
12 Mr. Gibson said his demand was \$100,000, and who pays it
13 is not up to him.

14 Mr. Underhill then said what Joe had previously
15 said about the fact that Mr. Gibson had demanded
16 \$100,000 and said that GM should pay it. Mr. Gibson
17 interrupted him and said he's not part of the process of
18 deciding who should pay the money, and he said that we
19 have to agree to that amount ourselves.

20 Mr. Lipps started to say that we have a
21 settlement, but Mr. Gibson cut him off and said he
22 understands what is going on and we do, too. He said we
23 understand his demand, and we can make a business
24 judgment as far as what to do.

25 He said he plans to file the notice of appeal

1 that week and if we want to make a deal, it would be
2 helpful for us to do it that week before he filed his
3 notice of appeal.

4 MR. RODA: Very good. I have no further
5 questions, Your Honor.

6 THE COURT: Cross-examine.

7 Let me get the numbering straight here. The
8 memo of the call on 4/28 is E.H.S. what?

9 MR. RODA: Three.

10 THE COURT: And then the April 29 one is 4?

11 MR. RODA: Yes.

12 THE COURT: All right, Mr. Gibson.

13 CROSS EXAMINATION

14 BY MR. GIBSON:

15 Q. Miss Burkholder, you are employed as an associate
16 at RodaNast; is that true?

17 A. Yes, I am.

18 Q. And how long have you worked at RodaNast?

19 A. Almost 11 years.

20 Q. So you spent your entire -- almost your entire
21 legal career at RodaNast?

22 A. Not my entire. I clerked for a judge in Monroe
23 County for two years.

24 Q. And then you went straight to RodaNast?

25 A. Correct.

1 Q. So Mr. Roda has been your boss for the last 11
2 years?

3 A. Correct.

4 Q. You would agree with me that these two
5 memorandums I have, these aren't verbatim transcripts of
6 the telephone conversations, are they?

7 A. Not verbatim word for word, no.

8 Q. Mr. Roda asked you on direct and you testified
9 that you have taken notes. Do you have those notes?

10 A. Yes, I do.

11 Q. Where are those notes?

12 A. I have them with me.

13 Q. May I see them, please?

14 MR. RODA: Let the record reflect that we
15 use scrap paper, Your Honor, that's why there is
16 printing on the other side.

17 MR. GIBSON: I'd like to have these notes
18 also marked as exhibits. I don't know what we are up to
19 as far as the numbers.

20 MR. RODA: I would be happy to mark them
21 E.H.S. 5 and 6. Let's have her identify which is which.

22 MR. GIBSON: Well, I can identify them on
23 here. It says one call. So as the other call, this is
24 the first one. So let's mark this as whatever -- I'm
25 using them.

1 MR. RODA: Just mark them then so the notes
2 of the 28th will be E.H.S.-5. The notes of the 29th
3 would be E.H.S.-6.

4 BY MR. GIBSON:

5 Q. And you would agree with me, Miss Burkholder,
6 that these notes that you took are less inclusive than
7 these memorandums I have, the corresponding memorandums;
8 is that true?

9 A. Yes, they are.

10 Q. Are these the original notes that you took?

11 A. Yes, they are.

12 Q. You didn't recopy anything?

13 A. No.

14 Q. You were present during the first telephone
15 conversation that I had with Mr. Roda on April 28th; is
16 that correct?

17 A. Yes, I was.

18 Q. Is it true that during that conversation I
19 explained to Mr. Roda that the objectors were of the
20 position that we had conferred a benefit on the class
21 and on the public by eliminating the perception that
22 attorneys unduly profit from unreasonable settlements?

23 A. Something to that effect; correct.

24 Q. Did I make that very clear?

25 A. Correct.

1 Q. During the telephone conversation, the first
2 telephone conversation that was just me, Mr. Roda, with
3 you present, it was never discussed as to whether or not
4 the settlement needed Court approval, was it?

5 A. No, it was not..

6 Q. That --

7 A. Well, Joe did mention that the settlement had
8 already been approved, so he wasn't sure what kind of
9 agreement we could enter into with you because the
10 settlement had been approved.

11 Q. I'm talking about any settlement agreement with
12 the objectors, that it was never discussed as to whether
13 or not that would need Court approval, was it?

14 A. That is correct.

15 Q. Have you participated during the 11 years that
16 you have worked at RodaNast -- do you primarily report
17 to Mr. Roda?

18 A. For the most part.

19 Q. Have you been involved in any other class action
20 cases?

21 A. Yes, very many.

22 Q. Which class actions cases have you been involved
23 in?

24 A. Oh --

25 Q. Just to the best of your recollection.

1 A. There was one against Bell Atlantic, one against
2 Educators Mutual.

3 Q. Is that the carpet?

4 A. Correct, Certified Carpet. There was one against
5 Educators Mutual Life. Brooks was the plaintiff in that
6 action.

7 Q. Where was that?

8 A. Correct, that was in the Eastern District of
9 Pennsylvania.

10 Q. Okay.

11 A. There was the Crossgates case that was filed
12 here, it was Lape versus Murray.

13 Q. L-a-p-e? Class case here in Lancaster County?

14 A. Correct. There's an aspartame litigation.

15 Q. Sure, in the Eastern District of PA, I think it
16 is?

17 A. Honestly, I don't even know.

18 Q. Which are the ones here in Lancaster County?

19 A. Those are the ones that I can think of.

20 Q. I have Lape, okay.

21 Are you aware of any objections that were filed
22 in any of the class action cases that you have
23 participated in while at RodaNast?

24 A. Yes.

25 Q. And are you aware that any of those have settled

1 privately?

2 A. Not that I am aware of. Not any that I have
3 personally been involved in with discussions.

4 Q. Now, I'm not asking if you were involved in the
5 settlement process, but are you aware of any objections
6 that were privately settled, even if -- just are you
7 aware of that?

8 A. No, I have no direct knowledge of anything like
9 that. I'm aware that this goes on in other actions.
10 I've heard rumors that it's gone on in other actions,
11 but I don't have any knowledge of anything.

12 Q. Have you heard of other instances where
13 objections have been privately settled?

14 A. Yes, I have.

15 Q. Has anyone ever told you that that's criminal?

16 A. No, but what I was told is that in those
17 situations, the objectors had conferred a benefit on the
18 class, so they had earned what the fees were.

19 Q. You are aware of other instances of private
20 settlements in class cases?

21 A. Correct.

22 Q. And you have never reported those to the
23 Disciplinary Board, I take it?

24 A. No.

25 MR. GIBSON: I have nothing further. Thank

1 you.

2 MR. RODA: Nothing further.

3 Your Honor, at this point, as I mentioned
4 earlier, Mr. Lipps is available by telephone if Your
5 Honor deemed it appropriate. He has also prepared and
6 signed an affidavit which we have here.

7 We leave it to Your Honor's discretion as to
8 whether you would like to have him sworn in and testify
9 by phone as a telephone deposition would proceed. It
10 would be brief.

11 MR. GIBSON: I'm assuming that Mr. Lipps'
12 affidavit contains the thrust of his testimony, so I am
13 not looking to inconvenience Mr. Lipps or make him come
14 here or anything like that.

15 If I could just review his declaration? As
16 long as there's nothing that I really feel compelled --

17 THE COURT: Well, this may be what's good
18 for the goose is good for the gander. How do you feel
19 about his affidavit of his clients which he wants me to
20 look at?

21 MR. RODA: Your Honor, my preference would
22 be to hook Mr. Lipps up, if that is possible from the
23 telephone that Your Honor has here.

24 THE COURT: It may or may not be, I don't
25 know. I think it's supposed to be able to be

1 conferenced.

2 MR. RODA: Or from any phone that would
3 allow a speaker. That's all we need. It would be very
4 brief. That would be my preference.

5 THE COURT: Can we do the same with your
6 clients?

7 MR. GIBSON: Your Honor, I have the
8 affidavits, and I'm happy to give them to the Court and
9 to counsel, which set forth the retainer agreement. I
10 think the quandary is going to be with the clients.
11 Aside from the trek here and that they are both employed
12 is the majority of any other testimony outside of these
13 affidavits would be -- just as I couldn't answer on my
14 cross examination, would be protected by the
15 attorney-client privilege.

16 So this was done in an effort to give the
17 Court the facts that I think would only be able to be
18 gotten anyway. Certainly if there's other follow-up, I
19 would be happy to either support --

20 THE COURT: Are there things beyond the
21 affidavit that you believe you have the right to
22 inquire?

23 MR. RODA: I haven't had the chance to see
24 them. I note for the record, Your Honor, that there are
25 exceptions to the attorney-client privilege, one of them

1 being crime or fraud.

2 MR. GIBSON: Well, there's no crime or fraud
3 proven here. This is just baseless, so I don't think
4 that that can even remotely apply.

5 THE COURT: Crime or fraud would require
6 demonstration of just what crime you're talking about.

7 MR. RODA: Understood.

8 THE COURT: And that there is a probable
9 cause to believe that those elements are met by the
10 conduct.

11 MR. RODA: I mention it merely so as not to
12 leave the Court with the impression that attorney-client
13 eliminates the possibility of any substantive testimony
14 from them. That would be a matter for further inquiry.

15 THE COURT: If that's the only thing. If
16 what you would inquire into would be areas of privilege
17 that was legitimate objection to privilege, then as far
18 as I'm concerned I can look at their affidavit and look
19 at Mr. Lipps' affidavit.

20 MR. GIBSON: We would be fine with that.

21 THE COURT: Is that acceptable?

22 MR. RODA: Yes. Mr. Lipps' affidavit will
23 not add anything beyond what Mr. Underhill has already
24 presented.

25 THE COURT: I think he's probably cumulative

1 because all the conversations were all together.

2 MR. RODA: Right.

3 THE COURT: Is that acceptable to you?

4 MR. GIBSON: That sounds fine, Your Honor.

5 THE COURT: Then I will look at the
6 affidavits of the Kairises and of Mr. Lipps.

7 MR. RODA: Your Honor, we should for the
8 record identify these notes. If I may write on them?

9 THE COURT: The 4/28, E.H.S.-5; and the
10 4/29, E.H.S.-6. And the Kairis is E.H.S.-1. So what's
11 the other gentleman's name?

12 MR. GIBSON: George.

13 THE COURT: He would be E.H.S.-7.

14 MR. GIBSON: We have 1 and 2 already. Those
15 were --

16 THE COURT: Do we have exhibits marked for
17 you yet, Mr. Gibson?

18 MR. GIBSON: You know, I was trying to do a
19 bunch of things at once. I have my entry of appearance.
20 I have my dockets. And in the cases where the
21 objections were privately settled, I have --

22 THE COURT: Well, let's mark Mr. Lipps as
23 E.H.S.-7. That puts it in sequence with the testimony
24 of witnesses. And then you tell me what you want to do
25 with the Kairis affidavits.

1 MR. GIBSON: Sequentially put them in the
2 case at the end of the other K exhibits, if that's
3 acceptable to the Court.

4 THE COURT: Let me read this, Mr. Lipps'
5 declaration. All right.

6 MR. RODA: Your Honor, for the record, I'm
7 looking to reconstruct what is E.H.S.-1.

8 THE COURT: Affidavit of Karen Kairis. You
9 had marked that when you were questioning Mr. Gibson
10 about --

11 MR. RODA: Thank you, Your Honor.

12 Your Honor, as a housekeeping matter, we did
13 not bring copies of Ms. Burkholder's notes. I would
14 propose one of several things.

15 THE COURT: I will permit you to make copies
16 and circulate them and substitute copies for the
17 originals.

18 MR. RODA: The original we will forward to
19 the Court.

20 THE COURT: Matters not to me. I will
21 permit substitution of copies for the original.

22 MR. RODA: And the record will show that
23 E.H.S.-6 is two pages. E.H.S.-5 is one.

24 THE COURT: I don't know that we have
25 numbered yet the George Kairis affidavit.

1 MR. GIBSON: I will make a point of that.

2 THE COURT: All right.

3 MR. RODA: So that would just be 8?

4 THE COURT: Well, see what he wants.

5 MR. GIBSON: I don't have copies either,
6 although one of these is a 103-page federal docket. I
7 could either -- I have flagged the portions where the
8 appeals were.

9 THE COURT: Well, I don't want them all. I
10 think what you do there is you pull out the relevant
11 portions of the docket. We don't want any more trees to
12 die for this.

13 MR. GIBSON: So I'm going to mark, I
14 believe, the first exhibit was the entry of appearance,
15 which I will mark K-1.

16 THE COURT: EHK-1, Expedited Hearing K-1.

17 MR. GIBSON: Again, I don't remember my
18 order, but I think number 2 was the docket in Nichols
19 versus SmithKline Beecham, which I will mark as EHK-2.
20 The other one is the docket in Reinhouse versus
21 GlaxoSmithKline, which is EHK-3.

22 THE COURT: These are all court dockets?

23 MR. GIBSON: EHK-2 and 3 are court dockets
24 from the district courts and then also are from the
25 circuit courts.

1 EHK-4 is the newspaper article. Even though
2 it's redundant, if the Court likes, I can mark EHK-5,
3 Karen's affidavit, or go straight to George.

4 THE COURT: Keep them together to remark it
5 EHK-5.

6 MR. GIBSON: That's Karen Kairis' affidavit.
7 And EHK-6 is George Kairis' affidavit. And again, just
8 to make sure for my own personal benefit so I don't
9 forget, I have already -- and I know I indicated to the
10 Court that I object to the hearing. But just for the
11 record as far as jurisdiction is concerned, I place my
12 objection --

13 THE COURT: So noted.

14 Is the testimonial portion and exhibit
15 portion concluded?

16 MR. GIBSON: Actually, this goes with -- I
17 have one more that goes with that. I need to remove my
18 notes. Should I make copies, Judge, of these dockets
19 and trim them down to what you need? I will do that.

20 THE COURT: That's what I would suggest.
21 Send copies to Mr. Roda.

22 MR. GIBSON: I will. They are also on
23 PACER, but I will send copies. The versions can also be
24 seen on PACER by counsel.

25 THE COURT: All right. So now the

1 evidentiary portion is concluded. Let me ask counsel,
2 how do they believe I should proceed here? Mr. Roda,
3 it's your motion, you go first.

4 MR. RODA: Yes, Your Honor. I believe that
5 we can go one of two ways.

6 One, Your Honor can proceed right to his
7 1925 statement. I mention in that that I believe Your
8 Honor had issued an order.

9 THE COURT: It's due today.

10 MR. RODA: That it is due today for the
11 statement.

12 THE COURT: Do you have it by chance,
13 Mr. Gibson?

14 MR. GIBSON: Your Honor, what I was planning
15 on requesting today is that under Rule 1925 (B), the
16 rule changed. It used to be -- you had given me 15
17 days, and the rule used to be 14 days. It was amended,
18 and now it's 21 days.

19 THE COURT: You want another seven?

20 MR. GIBSON: And I would request the time
21 permitted under the rule to flesh out the issues.

22 THE COURT: All right. I will grant you
23 what the rule allows, the 21 days, which also is a
24 useful period for both of you perhaps to submit to me
25 what you believe ought to happen as a result of what I

1 have heard.

2 MR. RODA: Very good.

3 MR. GIBSON: May I request, should it be in
4 the form --

5 THE COURT: What I will say, Mr. Roda, his
6 21st day, 1925 doesn't include this. It's the things
7 that he's -- the errors he's complaining of as to the
8 order that I issued. So I think his 1925 is just going
9 to be that.

10 You ought to go first on what you believe
11 should happen as a result of this. Because we are in
12 the period, and I believe I said for you ten days to
13 respond to his 1925. Frankly, now I'm not sure what the
14 rule says. It might not even say a response time, but
15 I'd like to get the response.

16 So we could bifurcate this in a way that by
17 his 21 days, you respond to me about this matter. Then
18 I would give you -- do you need more than ten to respond
19 to his 1925? I presume you both have an interest of
20 this being expeditiously dealt with.

21 MR. RODA: We do. But I was going to say,
22 Your Honor, I would like to see his 1925 because it
23 could bear upon how we see what has transpired today
24 weaving into his appeal.

25 THE COURT: Well, he's either done something

1 censurable by either the rules or by the Court or not.
2 So what he says in his 1925 hardly matters as to that.

3 MR. RODA: We will be guided, Your Honor,
4 and I will get it in whatever timetable you need.

5 THE COURT: I don't see they are related
6 except to the extent I know your motion contends that
7 this is -- that his alleged conduct bears on the bona
8 fide nature of his appeal and whether or not the appeal
9 is frivolous. But beyond that, it does nothing as to
10 the merits.

11 MR. RODA: That's fine, Your Honor. We will
12 have it in under whatever timetable Your Honor would
13 like.

14 THE COURT: And I also need this: To what
15 extent is this something I should be doing. I think he
16 has a position that I shouldn't be doing it at all. And
17 you have a position that I should.

18 It has relevance on the issue of how I react
19 to his 1925, even beyond whatever he has to say about
20 any errors in the fairness hearing approval process.

21 Am I right, Mr. Gibson?

22 MR. GIBSON: I would agree with that, yes,
23 Your Honor.

24 THE COURT: So seven more days for your
25 1925, give him your position on this hearing. Then you

1 will have -- how many days do you want? I gave you ten;
2 is that still good?

3 MR. RODA: To his 1925? That's fine.

4 THE COURT: You respond to the 1925 in ten,
5 and you respond to his position in ten. So everything
6 is coming to me from both of you on the same days. All
7 right? Any question?

8 MR. RODA: No. Just alert the Court, Your
9 Honor, this is not directly related to this, but so Your
10 Honor is aware of the schedule, we do intend to move to
11 quash his appeals, the appeals that he took from Your
12 Honor's order today.

13 THE COURT: You mean for me or Superior
14 Court?

15 MR. RODA: No, to the Superior Court. He
16 took appeals from your orders setting this hearing, and
17 that's the basis he claims you do not have jurisdiction.
18 We will be moving with the Superior Court to quash that.
19 Didn't want that to come as a surprise to Your Honor.

20 THE COURT: So when I get the notification
21 of that appeal, I won't say what's this.

22 MR. UNDERHILL: Your Honor, can I just put
23 on the record for General Motors, we are parties to
24 this, after all.

25 THE COURT: You are welcome to make the same

1 submission.

2 MR. UNDERHILL: I don't view General Motors
3 as being directly involved in the motion filed by
4 Mr. Roda with regard to the settlement because GM's
5 position is that it is not going to pay a penny and --

6 THE COURT: Well, but GM has a position, I
7 think, on the issue of whether it was a fair settlement.

8 MR. UNDERHILL: It does. And that may come
9 to the 1925. And so we would like the same ten days.

10 THE COURT: Oh, yes, absolutely. You have
11 ten days after his response is due, which is seven days
12 from now. And both of your responses are due ten days
13 after his response on the seven days.

14 MR. UNDERHILL: I don't anticipate doing
15 anything with respect to today's hearing. We will leave
16 that to Mr. Roda.

17 THE COURT: I assumed that would be the
18 case.

19 MR. UNDERHILL: One other thing I would like
20 to bring up.

21 THE COURT: Yes.

22 MR. UNDERHILL: Earlier we asked who this
23 gentleman was, and he was identified as a spectator, but
24 he clearly is more than that.

25 THE COURT: He does appear to be more than

1 that. Is he an associate?

2 MR. SINK: I'm a friend of Mr. Gibson's, and
3 I'm a member of the Bar, and I don't think that I have
4 done anything improper.

5 THE COURT: Of course you have not. I don't
6 think Mr. Underhill suggested that, and I didn't either,
7 but I am curious because you have conferred.

8 MR. SINK: And we share office space. Rob
9 Sink. I know your firm. I know Michele. We have been
10 in class cases together.

11 THE COURT: Thank you.

12 (The hearing adjourned at 3:53 p.m.)
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REPORTER'S CERTIFICATE

I hereby certify that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

In testimony whereof, I have hereunto subscribed my hand this 26th day of May 2009.

Cathy S. Mertz
Cathy S. Mertz, RMR
Official Court Reporter

AND NOW, _____, _____, this transcript is approved and ordered to be filed.

Louis J. Farina, President Judge